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**Massachusetts Department of Revenue  
Division of Local Services**

**LOCAL GOVERNANCE  
Home Rule and Local Finances**



**2012**

**Workshop C**

**Amy A. Pitter, Commissioner  
Robert G. Nunes, Deputy Commissioner**

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## **Workshop C**

### **LOCAL GOVERNANCE Home Rule and Local Finances**

#### **Table of Contents**

Home Rule and Local Finance Law Slides	1
Local Governance Review Questions	11
Case Study 1 - Group Insurance for School Union Employees	12
Case Study 2 - Special Fund for New Revenue Source	13
Case Study 3 - OPEB Trust Fund Special Acts	14
Statutes, Session Laws and Legal Opinions on Case Study 1	15
Chapter 206 of the Acts of 2012 – Relative to Superintendency Union #28 Benefits	30
Statutes, Session Laws and Legal Opinions on Case Study 2	31
Statutes, Session Laws and Legal Opinions on Case Study 3	40
Policies & Procedures of the Health Care Security Trust Board of Trustees with Respect to the State Retiree Benefits Trust Fund	58
Illustrative Special Acts Involving Municipal Finance Issues	63
General Local Governance Reference Materials	71

**LOCAL GOVERNANCE WORKSHOP C**

**To Improve Is to Change; to Be  
Perfect Is to Change Often.**  
Sir Winston Churchill

**We Don't Agonize, We Improvise!**  
Max, Retired Marine, Present  
MA Municipal DPW Employee

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**LOCAL GOVERNANCE WORKSHOP C**

**Why Consider Change?**

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**LOCAL GOVERNANCE WORKSHOP C**

**MA State Constitution and State Law  
Provide for Municipal Change:**

- Charter Commission for Adoption or Amendment of Charter;
- Home Rule Petition for Special State Legislation;
- Adoption of Local Option Statutes; and
- Adoption of Bylaws and Ordinances

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LOCAL GOVERNANCE WORKSHOP C

State Home Rule Amendment (“HRA”)

- Passed by Voters on November 8, 1966
- Hallmark: *The Right of Local Self-Government*

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LOCAL GOVERNANCE WORKSHOP C

State Home Rule Amendment (“HRA”)

- Municipalities May Adopt/Amend Local Charters w/ No State Involvement
- Municipalities May Adopt, Amend and Repeal Local Ordinances and Bylaws “Not Inconsistent With” State Constitution or State Statute

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LOCAL GOVERNANCE WORKSHOP C

State Constitutional Limits on  
Municipal Powers:

Mass. Const. Amend. Art. 2, § 6:

- Municipalities May Adopt, Amend or Repeal Local Ordinances and Bylaws and Exercise Any Power *Not Reserved to the State*

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**LOCAL GOVERNANCE WORKSHOP C**

**State Constitutional Limits on  
Municipal Powers:**

**Mass. Const. Amend. Art. 2, § 7:  
Municipalities May Not:**

- Regulate Elections
- Levy, Assess, and Collect Taxes
- Borrow Money or Pledge the Credit of the City or Town; (continued)

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**LOCAL GOVERNANCE WORKSHOP C**

**State Constitutional Limits on  
Municipal Powers:**

**Mass. Const. Amend. Art. 2, § 7:  
Municipalities May Not:**

- Dispose of Park Land
- Enact Private Law Governing Civil Relationships
- Define or Provide for the Punishment of a Felony/ Impose Imprisonment

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**LOCAL GOVERNANCE WORKSHOP C**

**State Statutory Limits on  
Municipal Charter Power:**

- G.L. c. 43B, s. 10(a): Only a Charter Commission Elected under G.L. c. 43B May Propose any Change in a Charter Relating in any Way to the Composition, Mode of Election, Appointment of, or Terms of, Office for TM, City Council, Mayor, City/Town Manager, or BOS

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**LOCAL GOVERNANCE WORKSHOP C**

**State Statutory Limits on  
Municipal Charter Power:**

- G.L. c. 43B, s. 20(a): The Following Must Always Be Elected Positions:
- Board of Selectmen
- School Committee
- Town Moderator, Open TM
- All Members, Representative TM

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**LOCAL GOVERNANCE WORKSHOP C**

**State Statutory Limits on  
Municipal Charter Power:**

- G.L. c. 43B, § 20(c): Odd Number of Members in Multiple Member Bodies
- G.L. c. 43B, § 20(d): No Term of Office of Elected Officer of More than 5 years
- G.L. c. 43B, § 20(d): Terms of Multiple Member Bodies Shall, to the Extent Possible, Expire in Different Years

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**LOCAL GOVERNANCE WORKSHOP C**

**Election of a Charter Commission  
Adopt, Change a Charter:**

- Citizen-initiated
- 9-member Charter Commission
- Adopt, Make Changes to Local Charter
- Publication, Notice of Preliminary Report
- AG Review of Report for Consistency with State Constitution and State Law

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**LOCAL GOVERNANCE WORKSHOP C**

**Election of a Charter Commission  
Adopt, Change a Charter:**

- Report Presented to BOS/City Council
- Recommended Changes Presented to Voters for Ratification
- Majority Vote Needed at Local Election
- 1-2 year process
- Submission of Final to AG & DHCD

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**LOCAL GOVERNANCE WORKSHOP C**

**Election of a Charter Commission  
Adopt, Change a Charter:**

- Alternatively, City Council/ TM May, by 2/3 Vote, Propose Charter Changes
- Approval of Mayor Needed
- C/T Executive May Also Propose Changes, City Council/TM 2/3 Vote
- AG Review, Submittal to DHCD
- Publication, Posting
- Majority Vote Needed at Local Election

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**LOCAL GOVERNANCE WORKSHOP C**

**Special Municipal Legislation (“Home Rule Petition”):**

- Prior to HRA, Local Charters and Changes Required State Approval (“Special Act” Charters, e.g., Somerville, 1899)

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**LOCAL GOVERNANCE WORKSHOP C**

**Special Municipal Legislation (“Home Rule Petition”):**

Since HRA, Special Legislation Initiated by Municipality May:

- Amend Special Act or Home Rule Charters
- Exempt Particular Municipality from General Application of Statute
- Allow Municipality to Assume Some Excluded State Powers

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**LOCAL GOVERNANCE WORKSHOP C**

**Special Municipal Legislation (“Home Rule Petition”):**

Requirements:

- Local Passage by Majority Vote
- Petition Filed or Approved by Voters, or Mayor/City Council or TM for Law Relating to that City or Town
- If Local Bodies Do Not Approve, Voters May Initiate Petition to be Presented to Voters at Election

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**LOCAL GOVERNANCE WORKSHOP C**

**Special Municipal Legislation (“Home Rule Petition”):**

Requirements (continued):

- Prep Municipal Pitch for Legislation
- State Legislative Approval
- Signing by the Governor

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**LOCAL GOVERNANCE WORKSHOP C**

**Special Municipal Legislation (“Home Rule Petition”):**

**Advantage:**

- **“May” Be a Quicker Process than the Home Rule Charter Commission Process**

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**LOCAL GOVERNANCE WORKSHOP C**

**Special Municipal Legislation (“Home Rule Petition”):**

**Disadvantage:**

- **Some Would Argue that a Home Rule Petition Subverts Local Self-Governance Provided by HRA**

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**LOCAL GOVERNANCE WORKSHOP C**

**Special Municipal Legislation**

**Another Option:**

**Mass. Const. Amend. Art. 2, § 8:**

**Governor Recommendation, then 2/3 Vote of House, Senate; – When Leg. Acts “in Relation to” a Single City or Town**

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LOCAL GOVERNANCE WORKSHOP C

**Adoption of Local Option State Statutes:**

- **Allows Some Structural or Organizational Changes without Charter or Special Act Approval**

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LOCAL GOVERNANCE WORKSHOP C

**Adoption of Local Option State Statutes:**

**Examples:**

- **G.L. c. 41, § 1B – Allows TM Approval, Plus Ballot Vote, to Enable Municipality to Change Any Elected Office or Board, except BOS or School Committee, to an Appointed One**

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LOCAL GOVERNANCE WORKSHOP C

**Adoption of Local Option State Statutes:**

**Examples:**

- **G.L. c. 41, § 21 – Allows BOS, by TM Vote, Plus Ballot Approval, to Act as Other Boards, or Take Over Certain Functions, e.g., Water and Sewer Board, Municipal Light Board**

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**LOCAL GOVERNANCE WORKSHOP C**

**Adoption of Local Option State Statutes:**

**Examples:**

- G.L. c. 41, § 21 – Allows BOS, by TM Vote, Plus Ballot Approval, to Act As/ Appoint Cemetery Comm’rs, Assessors, Supt. of Streets, Police Chief, Fire Chief, and Board of Health
- G.L. c. 41, § 25 – Allows BOS, with TM Approval, to Appoint Assessors

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**LOCAL GOVERNANCE WORKSHOP C**

**Adoption of Local Option State Statutes:**

**Examples:**

- G.L. c. 41, § 55 – Allows BOS, with TM Approval, to Appoint Town Accountant
- G.L. c. 40N – Allows City or Town to Adopt, with TM/ City Council Approval, independent Water and Sewer Commission, with Members Appointed by “Local Appointing Authority”

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**LOCAL GOVERNANCE WORKSHOP C**

**Adoption of Local Option State Statutes:**

**Examples:**

- G.L. c. 43C – Allows Local Ballot Vote to Authorize C/T’s to Create Three Consolidated Departments – Finance, Community Development, Inspections
- G.L. c. 40, § 4A – Allows “Chief Executive Officer” of a Municipality, w/ Approval by Mayor/Council or BOS, to Enter into Inter-Municipal Agreement

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LOCAL GOVERNANCE WORKSHOP C

Adoption of Bylaws and Ordinances:

- Municipalities May Adopt Structural, Administrative and Organizational Changes
- By Vote of City Council, Town Meeting
- Remember 6 excluded Subjects for Local Regulation

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LOCAL GOVERNANCE WORKSHOP C

Adoption of Bylaws and Ordinances:

Procedure:

- Towns, by G.L. 40, § 32, Must Submit Locally-Approved Bylaws to Attorney General for review – 90-Day Process
- A.G. Reviews Vote Procedure, Consistency with State Constitution and Statutes

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LOCAL GOVERNANCE WORKSHOP C

Adoption of Bylaws and Ordinances:

Procedure:

- Bylaw Posted Locally and Published
- Cities – No G.L. c. 40, § 32 Requirement
- Ordinances Must Be Consistent with State Constitution and State Statutes
- Local Publication, Posting Rules

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## LOCAL GOVERNANCE

### Review Questions

Town X wishes to incentivize Town citizens to adopt alternative energy initiatives. To that end, the Town has proposed the following:

- Bylaw exempting electric and hybrid vehicles from local motor vehicle excise taxes. Acceptable or no?
- Dedication of 20% of Community Preservation Act funds to Town alternative energy projects. Acceptable or no?
- Home Rule Petition authorizing town to create a separate fund for dedication of motor vehicle excise tax revenue to building bicycle lanes throughout Town. Acceptable or no?
- Adoption by local bylaw creating an Energy Efficiency Committee. Acceptable or no?
- Adoption of bylaw providing that no person may be held civilly or criminally liable for any damage caused by removing impediments to solar energy panels. Acceptable or no?
- Adoption of bylaw dedicating all Town-owned property to the siting of solar arrays and wind panels. Acceptable or no?
- Proposing Town Charter amendment requiring that fifty percent of fuel used by the Town for heating and operation of equipment, including motor vehicles, shall consist of bio-fuels. Acceptable or no?

## Local Governance

### Case Study 1

The towns of A, B & C are members of School Union #82 for the town elementary schools. The school union employs a superintendent, business manager, director of curriculum and a few other employees shared by the member school districts. The shared employees are covered by Town A's health insurance plan under MGL c. 32B, §2, because Town A contributes the highest amount of the shared employees' salaries. Town A pays 65% of its employees' premiums and the covered school union employees receive the same 65% contribution from the member towns. The towns pay their pro rata shares, based on the percentage of town students in the school union, pursuant to the member agreement.

Teachers and other employees in the elementary schools are covered under the individual town plans and percentage contributions. Town B pays 70% and Town C pays 60%. From 1980 to 1994 Town B's plan covered the school union employees and from 1995 to 2004 they were covered by Town C's plan, based on pupil population changes and reallocation of costs of the school union employees among the towns. Town A has covered the school union employees since 2004. Towns A & B have accepted MGL c. 32B, §9E and pay retiree health insurance premiums at the same % rates as covered employees. Town C has not adopted MGL c. 32B, §9E, but has accepted §9A, and pays retiree health insurance premiums of 50%.

1. Town C's board of selectmen has objected to having to pay its share of the 65% school union share of premiums for its shared employees and shared retirees and claims the town is prohibited from paying more than the 60% provided to other Town C employees under MGL c. 32B, §7A, or the 50% provided to other Town C retirees under MGL c. 32B, §9A. Is Town C required to pay the higher premiums under Chapter 32B or pursuant to its School Union agreement?
2. The school union superintendent is negotiating a new contract with the school union committee and is seeking health insurance coverage under Town B's plan and percentage contribution. May the superintendent be provided health insurance benefits under that plan? May the superintendent receive contributions to the plan at Town B's 70% rate?
3. The school union business manager has worked for the school union since 1981 and plans to retire this year. He is seeking coverage under Town B's plan as well. Town B has a policy that allows retirees from the town to opt into the town's plan even if not covered by the town at the time of retirement. May the business manager be covered by Town B's plan at Town B's coverage rate for retirees when he retires.
4. Could special legislation help resolve any of the above issues?

## Local Governance

### Case Study 2

The city of New Brighton has an historic shipyard, a good recreation harbor and a vibrant fishing industry and has been a good tourist destination, fostering local seafood restaurants, historic hotels and bed and breakfast inns. Despite these attributes, the city has suffered revenue shortfalls during the extended economic downturn and has had to cut back on the services it traditionally provided. The mayor has proposed that the city adopt the additional local option meals and room occupancy excises, which she claims would allow the city to continue providing its crucial services at former levels. The tourist business community is skeptical of the plan, claiming that increased room and meal taxes may keep tourists away. The city council proposed a compromise suggesting that the local option excises be adopted with a portion of the new revenues dedicated to enhancing tourism and the remainder used to fund police, fire, schools and trash removal services. A citizens group has also weighed in, suggesting that local option excises be adopted, but dedicating the revenues to a water treatment plant the city is obligated to construct based on a consent order.

1. Can the city dedicate the revenue from the new excises to a specific account or accounts by vote of the council, approved by the mayor?
2. If not, can it do so by ordinance?
3. If not, what other mechanism would be available to restrict the use of the revenues generated from the new excises and dedicate the revenues to different uses?

## Local Governance

### Case Study 3

Capetown petitioned for a special act to authorize it to establish an OPEB trust fund to offset its unfunded liabilities for its share of retiree health insurance premiums. The special legislation was enacted recently and contained special features not specifically authorized by the general laws had the town adopted MGL c. 32B, §20. Capetown wanted to have its retirement board control the investments of the fund and to have a third party custodian handle the funds if the treasurer so determined. It also wanted a more conservative investment policy authorized for retirement funds rather than the perceived riskier prudent investor rule (Chapter 203C) authorized by the general law. In addition, it wanted to explicitly provide how the funds may be used for the purpose of funding the town's ongoing liability for its share of the health costs of its retirees, as the general law does not explicitly set forth how the funds may be spent for the purpose. Finally, it wanted to explicitly require actuarial studies on a regular basis to establish its liability as it may change from time to time.

Town counsel found special legislation for several other Massachusetts communities which had provisions the town was seeking to enact, and drafted a special bill very similar to one enacted for the town of Belville. The Belville act contains another clause not found in other special acts or in the general law provision, which permits the deposit of employee contributions to the fund, and town counsel included it in Capetown's draft legislation, which was enacted. Unknown to town counsel, Belville was in the process of amending its special act and eliminated the employee contribution clause, out of concern it may not be appropriate to seek such contributions for the town's share of the retiree health care costs.

1. Capetown's Board of Selectmen has bargained with a couple of unions to require employee contributions to the OPEB fund, in exchange for a small wage increase. Not all unions have agreed, but the BOS has required as a matter of policy that all non-union employees make such contributions. Can the board enforce this policy under its special act? Can the treasurer withhold those amounts from employees' wages?
2. Capetown's treasurer has decided he would like the Commonwealth's Healthcare Security Trust Board to act as custodian and invest the funds in its trust fund? Can that be done under the special legislation?
3. Capetown's light department wants to establish its own OPEB fund under MGL c. 32B, §20? Can it do so?

## Statutes, Session Laws and Legal Opinions on Case Study 1

MGL c. 32B, §2. Definitions: ...

"Employee", any person in the service of a governmental unit or whose services are divided between 2 or more governmental units or between a governmental unit and the commonwealth, and who receives compensation for any such service, whether such person is employed, appointed or elected by popular vote ...; provided, however, that the duties of such person require not less than 20 hours, regularly, in the service of the governmental unit during the regular work week of permanent or temporary employment; ... If an employee's services are divided between governmental units, the employee shall, for the purposes of this chapter, be considered an employee of the governmental unit which pays more than 50 per cent of the employee's salary. But, if no one governmental unit pays more than 50 per cent of that employee's salary, the governmental unit paying the largest share of the salary shall consider the employee as its own for membership purposes, and that governmental unit shall contribute 50 per cent of the cost of the premium. If the payment of an employee's salary is equally divided between governmental units, the governmental unit having the largest population shall contribute 50 per cent of the cost of the premium. If an employee's salary is divided in any manner between a governmental unit and the commonwealth, the governmental unit shall contribute 50 per cent of the cost of the premium. ...

MGL c. 32B, § 7A. A governmental unit which has accepted the provisions of section ten and which accepts the provisions of this section may, as a part of the total monthly cost of contracts of insurance authorized by sections three and eleven C, with contributions as required by section seven, make payment of a subsidiary or additional rate which may be lower or higher than a premium determined by the governmental unit to be paid by the insured, the combination of which shall result in the governmental unit making payment of more, but not less, than fifty per cent of the total monthly cost for such insurance. No governmental unit, however, shall provide different subsidiary or additional rates to any group or class within that unit.

MGL c. 32B, §9E. ... A town shall provide for such payment by vote of the town or if a majority of the votes cast in answer to the following question which shall be printed on the official ballot to be used at an election in said town is in the affirmative:—"Shall the town, in addition to the payment of fifty per cent of a premium for contributory group life, hospital, surgical, medical, dental and other health insurance for employees retired from the service of the town, and their dependents, pay a subsidiary or additional rate?" Section nine A shall not apply in any governmental unit which accepts the provisions of this section. No governmental unit, however, shall provide different subsidiary or additional rates to any group or class within that unit.

MGL c. 32B, §9A. ... A town shall provide for the payment by vote of the town at a town meeting or if a majority of the votes cast in answer to the following question which shall be

printed on the official ballot to be used at an election in said town is in the affirmative:— “Shall the town pay one-half the premium costs payable by a retired employee for group life insurance and for group general or blanket hospital, surgical, medical, dental and other health insurance?”

MGL c. 71, §61. The school committees of two or more towns, each having a valuation less than two million five hundred thousand dollars, and having an aggregate maximum of seventy-five, and an aggregate minimum of twenty-five, schools, and the committees of four or more such towns, having said maximum but irrespective of said minimum, shall form a union for employing a superintendent of schools. A town whose valuation exceeds said amount may participate in such a union but otherwise subject to this section. Such a union shall not be dissolved except by vote of the school committees representing a majority of the participating towns with the consent of the department, nor by reason of any change in valuation or the number of schools. ...

MGL c. 71, §63. The school committees of such towns shall, for the purposes of the union, be a joint committee and shall be the agent of each participating town, provided that any school committee of more than three members shall be represented therein by its chairman and two of its members chosen by it. The joint committee shall annually, after completion of annual elections in all of the member towns meet at a day and place agreed upon by the chairmen of the constituent committees, and shall organize by choosing a chairman and a secretary. It shall employ for a three year term, a superintendent of schools, determine the relative amount of service to be rendered by him in each town, fix his salary, which shall not be reduced during his term, and may provide for fringe benefits, and other conditions of employment, including but not limited to, severance pay, relocation expenses, reimbursement for expenses incurred in the performance of duties or office, liability insurance, and leave for said superintendent and shall apportion the payment thereof in accordance with section sixty-five among the several towns and certify the respective shares to the several town treasurers. ...

MGL c. 71, §41. ... A school committee may award a contract to a superintendent of schools or a school business administrator for periods not exceeding six years which may provide for the salary, fringe benefits, and other conditions of employment, including but not limited to, severance pay, relocation expenses, reimbursement for expenses incurred in the performance of duties or office, liability insurance, and leave for said superintendent or school business administrator. Nothing in this section shall be construed to prevent a school committee from voting to employ a superintendent of schools who has completed three or more years' service to serve at its discretion.

MGL c. 41, §108N. Notwithstanding the provision of any general or special law to the contrary, any city or town acting through its board of selectmen or city council or mayor with the approval of the city council, as the case may be, may establish an employment contract for a period of time to provide for the salary, fringe benefits, and other conditions of employment, including but

not limited to, severance pay, relocation expenses, reimbursement for expenses incurred in the performances of duties or office, liability insurance, and leave for its town manager, town administrator, executive secretary, administrative assistant to the board of selectmen, town accountants, city auditor or city manager, or the person performing such duties having a different title.

Said contract shall be in accordance with and subject to the provisions of the city or town charter and shall prevail over any conflicting provision of any local personnel by-law, ordinance, rule, or regulation. In addition to the benefits provided municipal employees under chapters thirty-two and thirty-two B, said contract may provide for supplemental retirement and insurance benefits.

...

**Chapter 206 of the Acts of 2012** An Act Relative to Superintendency Union Benefits

*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is to allow forthwith the member towns of superintendency union 28 to enter into agreements to fund benefits for employees and retirees of the superintendency union, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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

Notwithstanding section 2 of chapter 32B of the General Laws, superintendency union 28, consisting of the towns of Erving, Leverett, New Salem, Shutesbury and Wendell may, in consultation with the joint school committee, as provided in section 63 of chapter 71 of the General Laws, enter into agreements to fund benefits for employees and retirees of the superintendency union in amounts proportionate to the benefits offered by each town to municipal employees and retirees. Those agreements shall be approved by each town through a majority vote of the board of selectmen or town council in each town.

Approved, August 3, 2012.

**From:** Blau, Gary on behalf of DOR DLS Law  
**Sent:** Wednesday, June 20, 2012 9:59 AM  
**To:** 'Michael Kociela'  
**Cc:** Williams, Henry H.; Wagner, Deborah  
**Subject:** 2012-749 - School Union #28 - Superintendency Union Employee Benefits

Michael:

The advisory opinions you attached were the Division's best reading of the group insurance laws based in part on case decisions available at the time. The Division does not have any regulatory authority over municipal insurance and therefore, they were and are not binding on the school union or any of the member governmental entities. To the best of our knowledge, the issues raised have not been decided by a court based on opposing party positions in litigation. The opinions were, and continue to be, simply our best interpretation of several statutes which might appear to be somewhat contradictory when applied to the relatively rare circumstance of your school union.

Given that the lead town has changed over the years since the opinion was issued, and that has caused a change in the coverage and contribution rates for the employees as well as the towns, we suggested to several officials that special legislation could provide the authority for a negotiated agreement for all the parties. That special legislation could also deal with the problems associated with which community would cover the retirees from the school union positions and the contribution rates from the towns for those employees. This still appears to be the best solution to your problem, which might otherwise result in litigation between the member towns and/or between the towns and the school union employees.

Since we have no particular jurisdiction to oversee or interpret the municipal group health insurance law, our division is unable to provide any further assistance regarding this local/regional matter in its current adversarial circumstances.

Gary A. Blau, Tax Counsel  
 Bureau of Municipal Finance Law  
 PO Box 9569  
 Boston, MA 02114-9569  
 617-626-2400  
[blau@dor.state.ma.us](mailto:blau@dor.state.ma.us)

This e-mail response is intended to provide general information about the application of municipal tax and finance laws and Department of Revenue policies and procedures. It is not a public written statement, as defined in 830 CMR 62C.3.1, and does not state the official position of the Department on the interpretation of the laws pertaining to local taxes and finance. It should be considered informational only.

**From:** Michael Kociela [<mailto:kociela@erving.com>]  
**Sent:** Thursday, June 14, 2012 2:56 PM  
**To:** DOR DLS Law  
**Cc:** Williams, Henry H.; Wagner, Deborah  
**Subject:** FW: Superintendency Union Employee Benefits

To Whom It May Concern:

The Erving School Union #28 has been paying health insurance benefits to its employees according to MGL Chapter 32B for decades, and allocating those costs to its member towns/districts. The method of benefit payments and allocation has also been upheld by the attached four opinions issued by the DOR Legal Department, all listed in one pdf. These opinions clearly describe how benefits are to be paid and how those costs are to be allocated to the member governmental units of the Superintendency Union.

The Union employees' benefits are established by the "lead government unit": the employees receive the benefits available from that unit and the costs are allocated to the other member government units. As stated in the August 24, 1992 letter from Harry Grossman, the factor for determining the lead agency is "...the government unit... paying... the largest share of the employee's salary..." According to the October 6, 1994 letter from Harry Grossman, "...the governmental unit paying the largest share of the salary shall consider the employee as its own for (health insurance) membership purposes..."

For the Erving School Union #28's purpose, the amount paid by each government unit for the employees' salary is determined by a formula based on student enrollments for each school. This cost allocation formula is approved by the Joint Supervisory School Committee of Union #28. This criteria for cost allocation is authorized under MGL Ch. 71, S. 53A as cited by Harry Grossman in his October 6, 1994 letter. For background information, the lead government unit at this time is the Town of Erving. Erving pays 84% for health insurance and therefore, the Union employees receive 84% paid as well. The other member Towns (Leverett, Shutesbury and the New Salem/Wendell Union School District) pay 75%. However, since the lead government unit has changed in the past and can change in the future, health insurance rates paid to Union employees may also change.

Toward the end of fiscal year 2011 and for the entire fiscal year 2012, the Town of Leverett Selectboard has withheld a portion of its share of Union #28 benefits costs claiming that the DOR opinions are outdated and contradictory to other MGL C.32B sections. (Leverett eventually paid its FY11 amount). For FY12, they have refused to pay more than the amount paid to their own employees. Although, they have never officially notified Union #28 in writing, there have been meetings where they have said they will not be paying their full share of the costs. At this time the New Salem/Wendell Union School District, acting as the fiscal agent for the Union, has accrued a deficit that is expected to be \$4,157.52 at year-end. This will reduce its Excess and Deficiency Fund by that amount.

The Leverett Selectboard with the other member Towns have requested that the Union School Committee create a formula-based benefit structure calculated on the health insurance rates for each government unit and its cost allocation percentage. However, according to Harry Grossman's letter dated August 24, 1992, "...the union school committee has no authority to modify the rate of contribution by the towns for the superintendency union employees..." In addition, the member Towns have filed a legislative bill (S.2092) to allow superintendency unions to establish health insurance rates other than the one prescribed by MGL C.32B. This bill has not been acted upon by the Massachusetts legislature.

I am requesting a review of the attached legal opinions and confirmation that these opinions are as valid today as when originally issued. If you are in agreement with these opinions, I request legal advice on how to remedy the deficit and how to ensure full payment and compliance from the Town of Leverett.

Thank you for your consideration.

Michael Kociela  
 Director of Finance & Operations  
 Erving School Union #28  
 18 Pleasant Street, Erving, MA 01344  
 413-423-3337, Fax: 413-423-3236  
[Kociela@erving.com](mailto:Kociela@erving.com)

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**From:** Blau, Gary on behalf of DOR DLS Law  
**Sent:** Thursday, January 27, 2011 5:27 PM  
**To:** 'u28supt@erving.com.secure'  
**Subject:** 2011-97 - School Union #28 - Review of 32Bsecd2

**Attachments:** 92-947.pdf; 92-660 (2nd letter).pdf; 92-660.pdf  
 Superintendent Wickman:

I have reviewed our database for opinions on group health insurance for retirees and active employees who worked for multiple municipal employers in a school union, and have found only the attached three opinions from 1992. As we discussed, the Division of Local Services has no specific statutory jurisdiction over group insurance matters or school unions and our legal opinions on this issue are not binding on the school union or its municipal members. The 1992 letters set out the opinion of the Chief Legal Counsel of the Division on the issues of group insurance coverage for school union employees and retirees from the school union regarding premium contribution requirements under M.G.L. c. 32B (local government group insurance) and M.G.L. c. 71, §§53A & 61-67 (school unions). We have not had the opportunity to address the issue again based on my review, nor has the law changed significantly with respect to the issues presented to the Division in 1992. At the time the opinions were rendered "not free from doubt," but based on a reasoned interpretation of a statute that could otherwise create significant uncertainty and instability in application over a number of years, both to the member towns and for the employees and retirees entitled to health insurance coverage.

I hope this addresses your concerns.

Gary A. Blau, Tax Counsel  
 Bureau of Municipal Finance Law  
 PO Box 9569  
 Boston, MA 02114-9569  
 617-626-2400  
 blau@dor.state.ma.us

This e-mail response is intended to provide general information about the application of municipal tax and finance laws and Department of Revenue policies and procedures. It is not a public written statement, as defined in 830 CMR 62C.3.1, and does not state the official position of the Department on the interpretation of the laws pertaining to local taxes and finance. It should be considered informational only.

**From:** u28supt [mailto:u28supt@erving.com]  
**Sent:** Thursday, January 27, 2011 3:04 PM  
**To:** DOR DLS Law  
**Cc:** 'Kate Woodward'  
**Subject:** Review of 32Bsecd2  
**Importance:** High

Dear Mr. Blau,

Thank you for reviewing your 1992 opinion of retiree health insurance with us by phone this afternoon. We were surprised and impressed to learn that you and the chief legal counsel at the time actually made this determination back in 1992. You indicated during our phone conversation that your opinion on this matter has not changed. Could you please send us a confirmation of that opinion.

You also asked us to provide you with the information surrounding the specific facts of our current situation. We gave those to you verbally by phone today, but here they are in writing:

- Erving is the lead town due to having the largest enrollment in its school within Union #28.
- Erving has been the lead town for close to 10 years.
- The lead town has changed over the years, but not too frequently.
- Union #28 employees have always received the benefits of the lead school.
- Currently the lead town (Erving) pays 86% of the health benefits for its active employees (any plan) and 79% of health benefits for its retirees (any plan).
- The other three Union #28 members (Shutesbury, Leverett and New Salem / Wendell Union) pay 75% of the health benefits for their active employees and 50% of the health benefits for their retirees (but only for a single plan).
- Currently the towns share the benefit costs for Union #28 employees with the non-lead towns paying their portion of the lead town's benefit package.
- Currently we have non-lead towns indicating that they are only going to pay their town benefit package rates to Union #28 employees (active and retired) which in our opinion is not consistent with MGL Ch.32B sec. d2. It is also not consistent with past practice.

Thank you for sharing your opinion on this matter.

Sincerely,

Joan M. Wickman  
Superintendent of Schools  
Erving School Union #28  
18 Pleasant Street  
Erving, MA 01344

phone: 413-423-3337  
fax: 413-423-3236

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MASSACHUSETTS DEPARTMENT OF REVENUE  
DIVISION OF LOCAL SERVICES

P.O. Box 9655  
Boston 02114-9655

MITCHELL ADAMS  
Commissioner

(617) 727-2300  
FAX (617) 727-6432

LESLIE A. KIRWAN  
Deputy Commissioner

July 21, 1992

Dee Ann Civello  
Treasurer  
P.O. Box 158  
Leverett, MA 01054-0158

Re: Ch. 32B - Premium Contribution for School Union Employees  
Our File No. 92-660

Dear Ms. Civello:

You have asked whether employees of the school union who are covered under the town's group health insurance plan may receive a 90% contribution for premiums from the union member towns. The town's own employees only receive a 75% contribution. The union school committee recently voted to increase the union's contribution for these employees to 90%.

Under G.L. Ch. 32B, S. 7A a town (governmental unit) may pay between 50% and 99% of group indemnity insurance premiums for its employees, but:

[n]o governmental unit, however, shall provide different subsidiary or additional rates to any group or class within that unit. (emphasis supplied)

In addition, the board of selectmen of the town sets the rate, subject to negotiation with any town collective bargaining units and subject to an appropriation necessary to fund the rate. Anderson v. Board of Selectmen of Wrentham, 406 Mass. 508 (1990). Thus, if the school union employees are employees of the town they may not receive a different or enhanced rate. Watertown Firefighters Local 1347 I.A.F.F., AFL-CIO v. Town of Watertown, 376 Mass. 706 (1978).

Under G.L. Ch. 71, SS. 53A, 61-67, a group of towns may form a union to hire a school superintendent and other employees to manage the schools of the various towns. Under this statutory

Dee Ann Civello  
Page Two

scheme, the superintendency union is not a separate political subdivision and therefor not a separate governmental unit under Chapter 32B. The superintendency union must determine "the relative amount of service to be rendered by [the superintendent] in each town" and must "apportion the payment [of the superintendent's compensation] ... among the several towns and certify the respective shares to the several town treasurers". G.L. Ch. 71, S. 63. Similarly, payment for the compensation of other superintendency union employees is apportioned among the several towns. G.L. Ch. 71, S. 53A. We believe, therefor, that the union superintendent and other union personnel are actually employees of the member towns. [It is to be noted that there is nothing in Section 63 which authorizes the union school committee to provide additional benefits for health insurance for the superintendent as there is for a town to provide for its chief executive officer. G.L. Ch. 41, S. 108N.]

Under G.L. Ch. 32B, S. 2(d) persons in the service of more than one governmental unit are considered to be employees of the governmental unit paying over 50% or the largest share of the employee's salary, or, if all pay the same percent, the governmental unit with the largest population. I assume for purposes of this opinion that Leverett is the governmental unit paying the largest salary share or having the largest population. Under the terms of the statute, the superintendency union employees would be considered employees of the town for purposes of coverage under Leverett's plan. Therefor, it is our view that the union school committee has no authority to modify the rate of contribution by the towns for the superintendency union employees on the town's insurance plan.

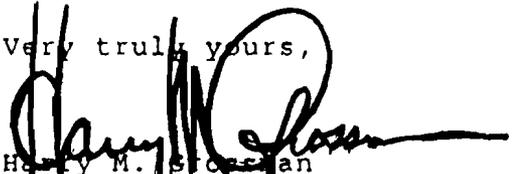
Despite the literal terms of Section 2(d) requiring the town to pay fifty percent of the premium, I interpret this language as modified by G.L. Ch. 32B, S. 7A authorizing the higher 75% rate and requiring uniformity of the rate among employees. In addition, at least for purposes of superintendency unions, we believe that the member towns must contribute their share of the 75% premium payment as part of the compensation agreement under G.L. Ch. 71, SS. 53A & 63.

Finally, it should be noted, under G.L. Ch. 32B, S. 16 the employee on the HMO plan must pay a minimum of 10% and a maximum of 50% of the premium. The board of selectmen has determined that the town will pay 75% and its employees pay 25%. In the absence of any collective bargaining agreement to the contrary, the board of selectmen have the authority to set this premium contribution, subject to adequate appropriation. We are unaware of any authority on the part of the superintendency union school committee to modify this contribution rate for superintendency union employees.

Dee Ann Civello  
Page Three

If I may be of further service, please do not hesitate to  
contact me again.

Very truly yours,



Harry M. Stroszjan  
Chief, Property Tax Bureau



MASSACHUSETTS DEPARTMENT OF REVENUE

DIVISION OF LOCAL SERVICES

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MITCHELL ADAMS  
Commissioner

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LESLIE A. KIRWAN  
Deputy Commissioner

August 24, 1992

Dee Ann Civello  
Treasurer  
P.O. Box 158  
Leverett, MA 01054-0158

Re: Ch. 32B - Premium Contribution for School Union Employees  
Our File No. 92-660

Dear Ms. Civello:

You have asked whether an employee of the school union who is covered under the town's HMO plan may receive a 90% contribution for premiums from the union member towns. The town's own employees only receive a 75% contribution for its indemnity plan and HMO members. The union school committee recently voted to provide a same dollar amount formula for union employees who are HMO members, up to a maximum of 90%. In particular you ask for a response to Superintendent Lubinsky's August 3, 1992 letter to you indicating his opinion that the union employees are not employees of Leverett for health insurance purposes, or, alternatively, that if they are such employees of the town, Leverett must pay the full amount of the premium to be paid by the governmental unit.

As specifically set forth in the balance of this letter, we conclude that the superintendency union employees are employees of Leverett for health insurance purposes and that the same premium percentage contributions established for town employees should apply to the school union employees. In addition, we conclude that the member towns must contribute their share of the health insurance payments made by Leverett as set forth in the school union agreement.

Under G.L. Ch. 32B, S. 7A a town (governmental unit) may pay between 50% and 99% of group indemnity insurance premiums for its employees, but:

Dee Ann Civello  
Page Two

[n]o governmental unit, however, shall provide different subsidiary or additional rates to any group or class within that unit. (emphasis supplied)

In addition, the board of selectmen of the town sets the rate, subject to negotiation with any town collective bargaining units and subject to an appropriation necessary to fund the rate. Anderson v. Board of Selectmen of Wrentham, 406 Mass. 508 (1990). Thus, if the school union employees are employees of the town, indemnity plan members may not receive a different or enhanced rate. Watertown Firefighters Local 1347 I.A.F.F., AFL-CIO) v. Town of Watertown, 376 Mass. 706 (1978).

Under G.L. Ch. 71, SS. 53A, 61-67, a group of towns may form a union to hire a school superintendent and other employees to manage the schools of the various towns. Under this statutory scheme, the superintendency union is not a separate political subdivision and therefor not a separate governmental unit under Chapter 32B.

The superintendency union must determine "the relative amount of service to be rendered by [the superintendent] in each town" and must "apportion the payment [of the superintendent's compensation] ... among the several towns and certify the respective shares to the several town treasurers". G.L. Ch. 71, S. 63. Similarly, payment for the compensation of other superintendency union employees is apportioned among the several towns. G.L. Ch. 71, S. 53A. We conclude, therefor, that the union superintendent and other union personnel are actually employees of the member towns. [It is to be noted that there is nothing in Section 63 which authorizes the union school committee to provide additional benefits for health insurance for the superintendent as there is for a town to provide for its chief executive officer. G.L. Ch. 41, S. 108N.]

Under G.L. Ch. 32B, S. 2(d) persons in the service of more than one governmental unit are considered to be employees of the governmental unit paying over 50% or the largest share of the employee's salary, or, if all pay the same percent, the governmental unit with the largest population. I assume for purposes of this opinion that Leverett is the governmental unit paying the largest salary share or having the largest population. Under the terms of the statute, the superintendency union employees would be considered employees of the town for purposes of coverage under Leverett's plan. Therefor, it is our view that the union school committee has no authority to modify the rate of contribution by the towns for the superintendency union employees covered by Leverett's group insurance plans.

Despite the literal terms of Section 2(d) requiring the town to pay fifty percent of the premium, we interpret this language as

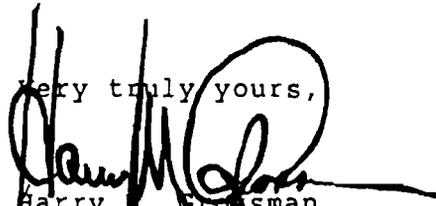
Dee Ann Civello  
Page Three

modified by G.L. Ch. 32B, S. 7A authorizing the higher 75% rate paid by the town and requiring uniformity of the rate among indemnity plan employees and by G.L. Ch. 32B, S. 16 authorizing a rate contribution by the town up to 90% for HMO plan employees. In addition, at least for purposes of superintendency unions, we conclude that the member towns must contribute their share of the governmental unit share of the premium payment as part of the compensation agreement under G.L. Ch. 71, SS. 53A & 63.

In the case of the employee covered by Leverett's HMO plan, under G.L. Ch. 32B, S. 16 that employee must pay a minimum of 10% and a maximum of 50% of the premium. The board of selectmen as the appropriate public authority has determined that the town will pay 75% and its employees pay 25% for HMO premiums. In the absence of any collective bargaining agreement to the contrary, the board of selectmen have the authority to set this premium contribution, subject to adequate appropriation. We are unaware of any authority on the part of the superintendency union school committee to modify this contribution rate for superintendency union employees.

If I may be of further service, please do not hesitate to contact me again.

Very truly yours,



Harry A. Grossman  
Chief Legal Counsel  
Division of Local Services



MASSACHUSETTS DEPARTMENT OF REVENUE

DIVISION OF LOCAL SERVICES

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LESLIE A. KIRWAN  
Deputy Commissioner

November 27, 1992

Leonard J. Lubinsky  
Superintendent of Schools  
Erving School Union #28  
18 Pleasant Street  
Erving, MA  
Millers Falls Postal Zone 01349

Re: Retired School Union Employee Health Insurance  
Our File No. 92-947

Dear Mr. Lubinsky:

You have asked whether the Town of Erving is required to make contributions to group health insurance premiums of a Union #28 employee who retired after the town of Leverett had become the employer for group insurance purposes. I understand that Erving has accepted the provision which requires it to make a 50% premium contribution to its retired employees group insurance. However, neither Leverett nor the other three towns have accepted any of the provisions of Chapter 32B of the General Laws which would require them to make any premium contribution for retirees.

In our opinion, although not free from doubt, the retired employee should be considered covered by the town of Leverett plan and would be entitled to no Erving contribution to group health insurance on that plan. Had the town of Erving been the employer for group insurance purposes, then Erving would have had to pay this benefit and the other towns would have had to make contributions to Erving for their share of this benefit.

Massachusetts General Laws Chapter 32B, Section 9 provides in pertinent part that:

The policy or policies of insurance shall provide that upon retirement of an employee... the group general or blanket insurance providing hospital, surgical, medical, dental and other health insurance ... shall be continued

Leonard J. Lubinsky  
Page Two

and the retired employee shall pay the full premium cost, subject to the provisions of section nine A or section nine E whichever may be applicable of the average group premium as determined by the appropriate public authority for such hospital, surgical, medical, dental and other health insurance. (emphasis added)

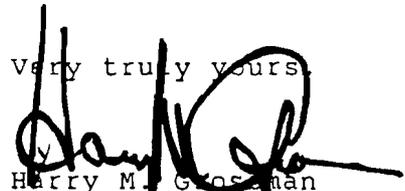
Thus, in the absence of the acceptance of Sections 9A or 9E, the retired employee is responsible for paying the entire premium in order to continue coverage. It is also clear that the plan being continued is the plan the employee was on at the time of retirement. In this case it was Leverett's plan since Leverett paid the greatest percentage of the costs of Union #28. See G.L. Ch. 32B, S. 2(d).

The town of Leverett has apparently not accepted Section 9A or 9E, but you have indicated that the town of Erving pays 50% of its retirees' premiums. I assume that Erving has accepted Section 9A authorizing payment by Erving of that share of its retired employee's premiums. However, for purposes of group insurance, the Union #28 employees are deemed to be employees of the town of Leverett and continued on Leverett's plan. In our opinion they should also be deemed to be retired employees of Leverett and subject to the benefits accepted by the town of Leverett.

Equitably, one might argue that the employees of Union #28 should get the benefits provided by the member towns to their own employees in the same proportion as the shares of salary paid by the member towns. However, the statute has not provided for such distribution of benefits and has provided an administratively simple mechanism for providing coverage. Ironically, had the town of Erving continued to provide the group insurance plan for the school superintendency union at the time the employee retired, its 50% premium payment benefit for retired employees would govern.

I hope this addresses your concerns. If I may be of further service, please do not hesitate to contact me again.

Very truly yours,

  
Harry M. Gossman  
Chief Legal Counsel  
Division of Local Services

**Acts****2012****CHAPTER 206** AN ACT RELATIVE TO SUPERINTENDENCY UNION BENEFITS.

*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is to allow forthwith the member towns of superintendency union 28 to enter into agreements to fund benefits for employees and retirees of the superintendency union, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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

Notwithstanding section 2 of chapter 32B of the General Laws, superintendency union 28, consisting of the towns of Erving, Leverett, New Salem, Shutesbury and Wendell may, in consultation with the joint school committee, as provided in section 63 of chapter 71 of the General Laws, enter into agreements to fund benefits for employees and retirees of the superintendency union in amounts proportionate to the benefits offered by each town to municipal employees and retirees. Those agreements shall be approved by each town through a majority vote of the board of selectmen or town council in each town.

Approved, August 3, 2012.

## Statutes, Session Laws and Opinions on Case Study 2

MGL c. 44, §53. All moneys received by any city, town or district officer or department, except as otherwise provided by special acts and except fees provided for by statute, shall be paid by such officers or department upon their receipt into the city, town or district treasury. Any sums so paid into the city, town or district treasury shall not later be used by such officer or department without specific appropriation thereof ...

MGL c. 59, §23. The assessors shall annually assess taxes to an amount not less than the aggregate of all amounts appropriated, granted or lawfully expended by their respective towns since the last preceding annual assessment and not provided for therein, of all amounts required by law to be raised by taxation by said towns during said year, of all debt and interest charges matured and maturing during the next fiscal year and not otherwise provided for, of all amounts necessary to satisfy final judgments against said towns, and of all abatements granted on account of the tax assessment of any year in excess of the overlay of that year and not otherwise provided for or any such deficits resulting from section fifty-three E of chapter forty-four; but such assessment shall not include liabilities for the payment of which towns have lawfully voted to contract debts. ... The assessors shall deduct from the amount required to be assessed (a) the amount of all estimated receipts of their respective towns lawfully applicable to the payment of the expenditures of the next fiscal year, ...

### Chapter 178 of the Acts of 1996

An Act Establishing a Tourism Fund in the Town of Provincetown

*Be it enacted, etc., as follows:*

SECTION 1. Notwithstanding the provisions of section fifty-three of chapter forty-four of the General Laws or any other general or special law to the contrary, the town of Provincetown is hereby authorized to establish a Tourism Fund to receive revenue under section three A of chapter sixty-four G of the General Laws, in the manner set forth in section two, and may appropriate monies in said fund to market, beautify and enhance tourism in said town.

SECTION 2. Twenty-five percent of the excise collected under section three A of chapter sixty-four G of the General Laws by the town of Provincetown for fiscal year nineteen hundred and ninety-seven shall be credited to the Tourism Fund, thirty-five percent of said excise collected for fiscal year nineteen hundred and ninety-eight shall be credited to said fund and forty-five percent of the excise collected shall be credited to said fund in each succeeding fiscal year.

**SECTION 3.** This act shall take effect upon its passage.

*Approved July 24, 1996*

**Chapter 391 of the Acts of 1998**

An Act Relative to the Room Occupancy Excise of the Town of Provincetown

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

Notwithstanding the provisions of any general or special law to the contrary, 19.125 per cent of the excise collected by the town of Provincetown under section 3A of chapter 64G of the General Laws shall be credited to the wastewater enterprise fund of said town without further appropriation.

*Approved November 25, 1998.*

**Chapter 377 of the Acts of 2010**

An Act Relative to the Room Occupancy Excise Tax in the Town of Provincetown

*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.** Chapter 178 of the acts of 1996 is hereby amended by striking out section 2 and inserting in place thereof the following section:-

Section 2. Thirty-five per cent of the excise collected under section 3A of chapter 64G of the General Laws by the town of Provincetown for the fiscal year beginning July 1, 2010 and each fiscal year thereafter shall be credited to the Tourism Fund established under section 1 without further appropriation.

**SECTION 2.** Chapter 391 of the acts of 1998 is hereby amended by striking out, in line 1, the figure “19.125” and inserting in place thereof the following figure:- 13.

**SECTION 3.** Twenty-five per cent of the excise collected under section 3A of chapter 64G of the General Laws by the town of Provincetown for the fiscal year beginning July 1, 2010 and each fiscal year thereafter shall be credited without further appropriation to the special purpose stabilization fund for capital improvements established under section 5B of chapter 40 of the General Laws by the town pursuant to the vote under Article 9 of the April 5, 2010 special town meeting.

**SECTION 4.** Twenty-seven per cent of the excise collected under section 3A of chapter 64G of the General Laws by the town of Provincetown for the fiscal year beginning July 1, 2010, and each fiscal year thereafter, shall be credited to the town's General Fund.

**SECTION 5.** This act shall take effect upon its passage.

*Approved, November 23, 2010.*

**Chapter 126 of the Acts of 2011**

An Act Establishing a Business and Economic Development Special Revenue Fund in the City of Marlborough

*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.** Notwithstanding section 53 of chapter 44 of the General Laws or any other general or special law to the contrary, the city of Marlborough shall establish in the city treasury a special revenue account to be known as the Business and Economic Development Special Revenue Fund, into which shall be deposited certain receipts comprising a portion of the total local room occupancy tax received annually by the city under section 3A of chapter 64G of the General Laws, as provided in section 2. The fund shall be used to promote and sustain the development of business and the local economy in the city of Marlborough.

**SECTION 2.** (a) Notwithstanding any general or special law to the contrary, the amount of the room occupancy excise based on a rate in excess of 4 per cent collected under said section 3A of said chapter 64G by the city of Marlborough for the fiscal year beginning July 1, 2011 and each fiscal year thereafter shall be credited to the Business and Economic Development Special Revenue Fund, and shall be subject to further appropriation by a majority vote of the city council.

(b) Notwithstanding any general or special law to the contrary, the amount of the room occupancy excise based on a rate equal to 4 per cent collected under said section 3A of said chapter 64G by the city of Marlborough for the fiscal year beginning July 1, 2011 and each fiscal year thereafter shall be credited to the General Fund of the city of Marlborough.

(c) Notwithstanding any general or special law to the contrary, any interest accruing on any amount on deposit in the Business and Economic Development Special Revenue Fund shall be credited to the General Fund of the city of Marlborough.

**SECTION 3.** Nothing in or resulting from this act shall affect amounts distributed in any fiscal year to the city of Marlborough from the Local Aid Fund.

**SECTION 4.** If the city of Marlborough revokes, by a majority vote of its city council, under said section 3A of said chapter 64G and sections (2)(h) and (2)(i) of 830 CMR 64G.3A.1, its acceptance of the room occupancy excise rate in excess of 4 per cent under said section 3A of said chapter 64G, the city council shall then decide, by a two-thirds vote, whether the Business and Economic Development Special Revenue Fund shall cease to have effect in the city. If two-thirds of the city council votes that the Business and Economic Development Special Revenue Fund shall cease to have effect in the city, all unexpended and uncommitted amounts on deposit in the fund, as of the date of the vote to revoke the rate in excess of 4 per cent, shall be credited to the General Fund of the city on the first day of the calendar quarter following 30 days after the date of the revocatory vote, under said section (2)(i) of 830 CMR 64G.3A.1; provided, however, that if two-thirds of the city council does not vote that the Business and Economic Development Special Revenue Fund shall cease to have effect in the city, the fund shall continue to have effect in the city, and all unexpended and uncommitted amounts on deposit in the fund, as of the date of the vote to revoke the rate in excess of 4 per cent, shall be subject to further appropriation by a majority vote of the city council.

**SECTION 5.** The city of Marlborough may close the fund by a two-thirds vote of its city council. Such vote to close shall designate that: (a) the Business and Economic Development Special Revenue Fund shall cease to have effect in the city; (b) all unexpended and uncommitted amounts on deposit in the Business and Economic Development Special Revenue Fund, as of the date of the vote to close, shall forthwith be credited to the General Fund of the city; and (c) the portion of the total room occupancy excise in excess of 4 per cent received annually by the city under said section 3A of said chapter 64G and credited to the Business and Economic Development Special Revenue Fund, as provided in section 2, shall thereafter be credited to the General Fund of the city.

**SECTION 6.** This act shall take effect upon its passage.

*Approved, October 7, 2011.*

**Chapter 248 of the Acts of 2012**

An Act Establishing a Sewer Construction Fund for the Town of Barnstable

*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.** Notwithstanding section 53 of chapter 44 of the General Laws or any other general or special law to the contrary, the town of Barnstable may establish a Sewer Construction Fund to receive revenue under section 3A of chapter 64G of the General Laws, in the manner set forth in section 2, and may appropriate monies in said fund for sewer construction.

Notwithstanding any general or special law to the contrary, the amount of the excise collected under section 2 of chapter 64L of the General Laws by the town of Barnstable beginning with fiscal year 2011 shall be credited to the Sewer Construction Fund without further appropriation. Any interest accrued shall be added to and become part of the Sewer Construction Fund. The treasurer of the town of Barnstable shall be the custodian of all such funds and may deposit the proceeds in national banks or invest the proceeds by deposit in savings banks, co-operative banks or trust companies organized under the laws of the commonwealth, or invest the same in such securities as are legal for the investment of funds of savings banks under the laws of the commonwealth or in federal savings and loans associations situated in the commonwealth.

**SECTION 2.** Notwithstanding any general or special law to the contrary, the amount of the excise based on rates in excess of 4 per cent collected under section 3A of chapter 64G of the General Laws by the town of Barnstable beginning with fiscal year 2011 shall be credited to the Sewer Construction Fund, established in section 1, without further appropriation.

**SECTION 3.** This act shall take effect upon its passage.

*Approved, August 22, 2012.*



April 28, 2005

Robert L. Duffy, Jr., Chairperson  
Board of Water Commissioners  
Town Building  
41 Cochituate Road  
Wayland MA 01778

Re: Water Revenues  
Our File No. 2005-136

Dear Mr. Duffy:

This is in response to your request for a legal opinion about the treatment of water revenues. We understand that the water department of the town was established by a special act, Chapter 80 of the Acts of 1878. Town counsel advised you that the act does not provide for retention of surplus revenue in a separate account dedicated to water purposes. We agree.

As you know, all expenses of a city, town or district are ordinarily budgeted in the general fund, with all anticipated revenues used as estimated receipts when setting the tax rate. G.L. c. 44 §53 and c. 59 §23. Actual revenues received during the fiscal year in excess of that estimate become part of the town's free cash when certified by the Director of Accounts. G.L. c. 59 §23. They may not be retained for any particular department's use without legislation expressly authorizing special treatment.

Historically, municipal water supply systems were established by special legislation and many of those acts, particularly the older ones, provide for accounting for water revenues in the general fund. In 1938, the legislature amended the General Laws by adding §39A to c. 40, which gave municipalities the right to establish water supply systems without the need of special legislation. Ch. 172 §3 of the Acts of 1938. It also added G.L. c. 41 §69B, which authorizes the water commissioners in municipalities establishing water supply systems under G.L. c. 40 §39A to fix rates for use of water. Ch. 172 §4 of the Acts of 1938. Under G.L. c. 41 §69B, water expenses and revenues are also budgeted in the general fund when setting the tax rate, but any surplus revenue is separately accounted for and is available for appropriation only for certain water purposes. Municipalities that established their water supplies under special acts with other provisions regarding the treatment of water revenues may accept G.L. c. 41 §69B and account for water revenue in the manner it specifies, *i.e.*, as special revenue, with any surplus retained for water purposes.

Wayland's special act predates G.L. Ch. 41 §69B and does not expressly provide for the separate accounting of surplus water revenue. The only language in the act regarding revenues is found in Section 4. It provides that the town is to "annually raise by taxation" an amount sufficient along with water revenue to pay certain water expenses. We believe this means that the expenses are budgeted in the general fund, *i.e.*, raised by taxation, with anticipated revenues used to defray or offset those expenses.

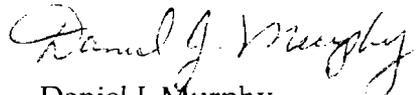
Robert L. Duffy, Jr., Chairperson  
Board of Water Commissioners  
Town of Wayland  
Page Two

If the town wishes to dedicate surplus water revenues for water purposes, it may accept G.L. c. 41 §69B, or seek to amend its special act to include similar language. Alternatively, it may establish an enterprise fund to separately account for the revenues and expenses of the water service. G.L. c. 44 §53F½.

We note that even though the surplus is not legally dedicated to water purposes, your accounting officer can certainly identify the amount of fund balance attributable to the water service and once certified as part of free cash, the town may appropriate all or part of that amount for those purposes.

If you have further questions, please do not hesitate to contact me again.

Very truly yours,



Daniel J. Murphy  
Chief, Property Tax Bureau

DJM/KC



April 17, 2001

David S. Tobin, Esquire  
Tobin and Sullivan  
60 William Street, Suite 330  
Wellesley, MA 02481

Re: Traffic Mitigation Fund  
G.L. Chapter 40A, Section 9  
Our File No. 2001-136

Dear Mr. Tobin:

This is in reply to your recent letter requesting an opinion with respect to a proposal to amend the Town of Needham's zoning by-laws and, as a part thereof, to establish a special fund, the Traffic Mitigation Fund.

Specifically, the proposal would amend the zoning by-laws by changing the dimensional requirements in certain zoning districts. These changes would allow for more intensive uses if authorized by special permits approved by the Planning Board. Under the proposed by-law, special permits would be conditioned upon the payment to the Town of \$1500 for each additional parking space required for the permitted additional floor space. This fee would be called a Traffic Improvement Fee and would be deposited in the Traffic Mitigation Fund (the Fund). Pursuant to the by-law, monies in the Fund would be used by the Town:

"...for the purpose of addressing long term traffic improvements clearly related to and directly benefiting the uses within the area covered by the District Plan" (Section 6.8.1(e))"

Initially, you ask whether the proposed zoning by-law provisions are authorized under the provisions of G.L. Chapter 40A, Section 9 or any other provisions of law. Secondly, you inquire as to the type of fund that would be used to handle the proposed fees on an interim basis. In this regard, you indicate that the Town plans to file a home rule petition if this proposed zoning by-law is approved by Town Meeting, which petition would legislatively authorize the establishment of the Fund and prescribe the accounting and expenditure requirements for such monies.

David S. Tobin, Esquire  
Page Two

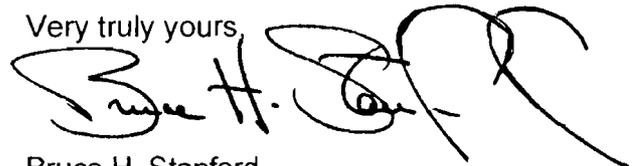
The answer to your first question, whether the imposition of fees for restricted purposes such as the proposed Traffic Mitigation Fee is authorized by G.L. Chapter 40A, Section 9, is uncertain to us. Although Section 9 permits municipalities to require the provision of open space, low and moderate income housing, and traffic and pedestrian improvements in connection with certain types of development, it does not address directly the imposition of fees for such purposes. Case law suggests that towns do not have unrestricted power to assess impact fees for development. See Northeast Builders Association of Massachusetts, Inc. v. Dracut, (1987) Middlesex Sup. Ct. 87-6222.

Also, we believe that a town may not dedicate particular revenue items to restricted accounts except as authorized by statute. For these reasons, we think your plan to seek home rule legislation specifically providing for such fees, establishing the Traffic Mitigation Fund, and prescribing the expenditure requirements for such monies is prudent.

You also inquire as to how such fees should be handled if the by-law is enacted and implemented and monies are received before the enactment of the proposed home rule statute. In this regard, you inquire about the use of a revolving fund or enterprise account. In our view, neither a departmental revolving fund under G.L. Chapter 44, Section 53E½, nor an enterprise fund under G.L. Chapter 44, Section 53F½, would be appropriate for such fees. The Section 53E½ fund is only available for "departmental receipts received in connection with the programs supported by such revolving fund." In our view, payments of conditional fees at the time of the issuance of a special permit would not constitute departmental program receipts within the purview of Section 53E½. Moreover, we find no features of this zoning proposal that would warrant the establishment and operation of an "enterprise" fund under the provisions of G.L. Chapter 44, Section 53F½. Rather, to the extent such fees are valid as a condition of the special permit process under G.L. Chapter 40A, Section 9, we think such monies would have to be earmarked as a part of a special revenue account for traffic improvements. As there is no provision of law as yet authorizing a special expenditure process for such monies, we think they would have to be expended by the regular appropriation process.

I hope this information proves helpful. If I may be of any additional assistance in this or any other matter, please do not hesitate to contact me.

Very truly yours,



Bruce H. Stanford  
Chief, Property Tax Bureau

BHS/jeb

### Statutes, Session Laws and Opinions on Case Study 3

**MGL c. 32B, §20.** *Text of section as amended by St. 2011, c. 68, Sec. 57, effective July 1, 2011.*

(a) A city, town, district, county or municipal lighting plant that accepts this section may establish an Other Post-Employment Benefits Liability Trust Fund, and may appropriate amounts to be credited to the fund. Any interest or other income generated by the fund shall be added to and become part of the fund. Amounts that a governmental unit receives as a sponsor of a qualified retiree prescription drug plan under 42 U.S.C. section 1395w-132 may be added to and become part of the fund. All monies held in the fund shall be segregated from other funds and shall not be subject to the claims of any general creditor of the city, town, district, county or municipal lighting plant.

(b) The custodian of the fund shall be (i) a designee appointed by the board of a municipal lighting plant; (ii) the treasurer of any other governmental unit; or (iii) if designated by the city, town, district, county or municipal lighting plant in the same manner as acceptance prescribed in this section, the Health Care Security Trust board of trustees established in section 4 of chapter 29D, provided that the board of trustees accepts the designation. The custodian may employ an outside custodial service to hold the monies in the fund. Monies in the fund shall be invested and reinvested by the custodian consistent with the prudent investor rule established in chapter 203C and may, with the approval of the Health Care Security Trust board of trustees, be invested in the State Retiree Benefits Trust Fund established in section 24 of chapter 32A.

(c) This section may be accepted in a city having a Plan D or Plan E charter, by vote of the city council; in any other city, by vote of the city council and approval of the mayor; in a town, by vote of the town at a town meeting; in a district, by vote of the governing board; in a municipal lighting plant, by vote of the board; and in a county, by vote of the county commissioners.

(d) Every city, town, district, county and municipal lighting plant shall annually submit to the public employee retirement administration commission, on or before December 31, a summary of its other post-employment benefits cost and obligations and all related information required under Government Accounting Standards Board standard 45, in this subsection called "GASB 45", covering the last fiscal or calendar year for which this information is available. On or before June 30 of the following year, the public employee retirement administration commission shall notify any entity submitting this summary of any concerns that the commission may have or any areas in which the summary does not conform to the requirements of GASB 45 or other standards that the commission may establish. The public employee retirement administration commission shall file a summary report of the information received under this subsection with the chairs of the house and senate committees on ways and means, the secretary of administration and finance and the board of trustees of the Health Care Security Trust.

**MGL c. 32B, §20.** *Text of section as added by St. 2008, c. 479, effective January 10, 2009, until July 1, 2011.*

A city, town, district, county or municipal lighting plant that accepts this section, may establish a separate fund, to be known as an Other Post Employment Benefits Liability Trust Fund, and a funding schedule for the fund. The schedule and any future updates shall be designed, consistent with standards issued by the Governmental Accounting Standards Board, to reduce the unfunded actuarial liability of health care and other post-employment benefits to zero as of an actuarially acceptable period of years and to meet the normal cost of all such future benefits for which the governmental unit is obligated. The schedule and any future updates shall be: (i) developed by an actuary retained by a municipal lighting plant or any other governmental unit and triennially reviewed by the board for a municipal lighting plant or by the chief executive officer of a governmental unit; and (ii) reviewed and approved by the actuary in the public employee retirement administration commission.

The board of a municipal lighting plant or the legislative body of any other governmental unit may appropriate amounts recommended by the schedule to be credited to the fund. Any interest or other income generated by the fund shall be added to and become part of the fund. Amounts that a governmental unit receives as a sponsor of a qualified retiree prescription drug plan under 42 U.S.C. 1395w-132 may be added to and become part of the fund.

The custodian of the fund shall be: (i) a designee appointed by the board of a municipal lighting plant; or (ii) the treasurer of any other governmental unit. Funds shall be invested and reinvested by the custodian consistent with the prudent investor rule set forth in chapter 203C.

This section may be accepted in a city having a Plan D or Plan E charter by vote of the city council; in any other city by vote of the city council and approval of the mayor; in a town by vote of the town at a town meeting; in a district by vote of the governing board; in a municipal lighting plant by vote of the board; and in a county by vote of the county commissioners.

### **Chapter 113 of the Acts of 2012**

An Act Authorizing the Town of Plymouth to Establish An Other Post-employment Benefits Fund

*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 have the following meanings:

“GASB 43 and 45”, statements 43 and 45 of the Governmental Accounting Standards Board as amended from time to time and their successors.

“Other post-employment benefits” or “OPEB”, post-employment benefits other than pensions as that term is defined in GASB 43 and 45, including post-employment healthcare benefits, regardless of the type of plan that provides them, and all post-employment benefits provided separately from a pension plan, excluding benefits defined as termination offers and benefits.

**SECTION 2.** (a) There shall be in the town of Plymouth an OPEB Trust Fund, which shall be under the supervision and management of the Plymouth retirement board established under paragraph (b) of subdivision (4) of section 20 of chapter 32 of the General Laws. The town treasurer shall be the custodian of the OPEB Trust Fund and may employ an outside custodial service.

(b) Beginning in fiscal year 2012, the OPEB Trust Fund shall be credited with all amounts, appropriated or otherwise made available by the town for the purposes of meeting the current and future OPEB costs payable by the town. The OPEB Trust Fund shall be credited with all amounts contributed or otherwise made available by employees of the town, for the purpose of meeting future OPEB costs payable by the town. Amounts in the OPEB Trust Fund, including any earnings or interest accruing from the investment of these amounts, shall be expended only for the payment of the costs payable by the town for OPEB in consultation with said retirement board. Subject in each instance to the approval of said retirement board, the town treasurer shall invest and reinvest the amounts in the OPEB Trust Fund not needed for current disbursement consistent with the prudent person rule, but no funds may be invested directly in mortgages or in collateral loans. The OPEB Trust Fund shall be subject to the public employee retirement administration commission's triennial audit.

(c) Said retirement board may employ any qualified bank, trust company, corporation, firm or person to advise it on the investment of the OPEB Trust Fund and may pay from the OPEB Trust Fund for this advice and other services determined by said retirement board. Procurement for these services shall be subject to the procurement procedures and rules followed by said retirement board for services to the town's contributory retirement system.

(d) If any civil action is brought against a member of said retirement board, the defense or settlement of which action is made by an attorney employed by said retirement board, the member shall be indemnified for all expenses incurred in the defense of the action and shall be indemnified for damages to the same extent as provided for public employees in chapter 25B of the General Laws if the claim arose out of acts performed by the member or members while acting within the scope of the member's official duties; provided, however, that a member of a retirement board shall not be indemnified for expenses incurred in the defense of an action or

damages awarded in an action in which there is shown to be a breach of fiduciary duty, an act of willful dishonesty or an intentional violation of law by the member.

**SECTION 3.** (a) An actuary, who shall be a member of the American Academy of Actuaries, shall perform an actuarial valuation of the town's OPEB liabilities and funding schedule, as of January 1, 2011, and no less frequently than every second year thereafter. The determinations shall be made in accordance with generally accepted actuarial standards and shall conform to the requirements of GASB 43 and 45 and the actuary shall make a report of the determinations to the town meeting. The report shall, without limitation, detail the demographic and economic actuarial assumptions used in making the determinations and each report after the first report shall also include an explanation of the changes, if any, in the demographic and economic actuarial assumptions employed and the reasons for the changes.

(b) Beginning in fiscal year 2012, all payments for the purposes of meeting the town's costs of OPEB under this act shall be made from the OPEB Trust Fund. Funds in the OPEB Trust Fund shall be segregated from all other funds. Disbursements from the OPEB Trust Fund, including any earnings or interest accruing from the investment of these amounts, shall only be based on sections 1 to 3, inclusive, of this act.

**SECTION 4.** Any federal reimbursements, that a political subdivision receives, as a participant in the Retiree Drug Subsidy Program created under the Medicare Prescription Drug Improvement and Modernization Act of 2003 (Pub. L. No. 108-173), may be added to and become part of said fund.

**SECTION 5.** This act shall take effect upon its passage.

*Approved, June 13, 2012.*

**Chapter 88 of the Acts of 2004.**

An Act Authorizing the Town of Wellesley to Establish a Group Insurance Liability Fund

**SECTION 1.** As used in this act, the following words shall have the following meanings:-

"Normal cost of post retirement benefits", that portion of the actuarial present value of future premium costs and claim costs payable by the town on behalf of, or direct payments to, retired employees, including school teachers, of the town and the eligible surviving spouses or dependents of deceased employees, including school teachers, of the town, pursuant to this act which is allocable to a particular fiscal year, as determined by an actuary pursuant to section 2.

"Post retirement benefit liability", the present value of the town's obligation for future premium costs and claim costs payable by the town on behalf of, or direct payments to, retired and prospective retired employees of the town and the eligible surviving spouses or dependents of deceased and prospectively deceased employees of the town attributed by the terms of the plan to employee's service rendered to the date of the measurement, pursuant to this act as determined by an actuary, pursuant to section 2.

"Premium costs and claim costs", the amounts payable by the town for the provision of retiree health and life insurance.

"Unfunded post retirement benefit liability", the difference between the post retirement benefit liability on the measurement date and the actuarial value of the assets of the Group Insurance Liability Fund on the same date, as determined by an actuary, pursuant to section 2.

"Unfunded post retirement benefit liability amortization payments", the amount which, when paid into the Group Insurance Liability Fund annually over a period of years together with the normal cost of post retirement benefits for each year of said period of years, will reduce to zero at the end of said period the unfunded post retirement benefit liability in existence as of the beginning of said period, as determined by an actuary.

**SECTION 2.** (a) There shall be in the town of Wellesley a Group Insurance Liability Fund, which shall be under the supervision and management of the town's contributory retirement board established under paragraph (b) of subdivision (4) of section 20 of chapter 32 of the General Laws. The town treasurer shall be the custodian of the fund and may employ an outside custodial service.

(b) The fund shall be credited with all amounts appropriated or otherwise made available by the town for the purposes of meeting the current and future premium costs and claim costs payable by the town on behalf of, or direct payments to, retired employees of the town and the eligible surviving spouses or dependents of deceased employees of the town pursuant to this act. Amounts in the fund including any earnings or interest accruing from the investment of such amounts shall be expended only for the payment of such premium costs and claim costs payable by the town on behalf of, or direct payments to, retired employees of the town and the eligible surviving spouses or dependents of deceased employees of the town, except as otherwise provided in this act, and only in accordance with a schedule of such payments developed by an actuary in consultation with the town's contributory retirement board. Subject in each instance to the approval of the town's contributory retirement board, the town treasurer shall invest and reinvest the amounts in the fund not needed for current disbursement consistent with the prudent person rule, but no funds may be invested directly in mortgages or in collateral loans. The fund shall be subject to the public employee retirement administration commission's triennial audit.

(c) The board may employ any qualified bank, trust company, corporation, firm or person to advise it on the investment of the fund and may pay from the fund for such advice and such other services as determined by the town's contributory retirement board.

**SECTION 3.** (a) An actuary shall determine, as of January 1, 2003, and no less frequently than every second year thereafter, the normal cost of post retirement benefits, the post retirement benefit liability, and the unfunded post retirement benefit liability. All such determinations shall be made in accordance with generally accepted actuarial standards, and the actuary shall make a report of such determinations. The report shall, without limitation, detail the demographic and economic actuarial assumptions used in making such determinations, and each such report subsequent to the first such report shall also include an explanation of the changes, if any, in the demographic and economic actuarial assumptions employed and the reasons for any such changes, and shall also include a comparison of the actual expenses by the town for premium costs and claim costs constituting the post retirement benefit liability during the period since the last such determination, and the amount of such expenditures which were predicted pursuant to the previous such report for the period.

(b) An actuary, in consultation with the town's contributory retirement board, shall establish a schedule of annual payments to be made to the Group Insurance Liability Fund designed to reduce to zero the unfunded post retirement benefit liability. The schedule shall reduce the initial unfunded post retirement benefit liability over a period of years not to exceed 30. Any additional unfunded liability created subsequent to the last such determination by the provision of any new benefit or by any increase in the premium share payable by the town shall be separately so amortized over the 15 years following the date of the determination in which such additional liability is first recognized. Each such annual payment shall be equal to the sum of the unfunded post retirement benefit liability amortization payment required for such year and the payments required to meet the normal cost of post retirement benefits for such fiscal year.

(c) All payments for the purposes of meeting the town's share of premium costs and claim costs or direct payments to retired employees of the town and the surviving spouses or dependents of deceased employees of the town pursuant to this act shall be made from the Group Insurance Liability Fund in accordance with a schedule of disbursements established by the actuary.

**SECTION 4.** This act shall take effect upon its passage.

*Approved May 6, 2004.*

**Chapter 97 of the Acts of 2007.**

An Act Authorizing the Town of Belmont to Establish an Other Postemployment Benefits Trust Fund

*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 have the following meanings:

“GASB 43 and 45”, Statements 43 and 45 of the Governmental Accounting Standards Board and its successors.

“Other postemployment benefits” or “OPEB”, postemployment benefits other than pensions as that term is defined in GASB 43 and 45 including postemployment healthcare benefits, regardless of the type of plan that provides them, and all postemployment benefits provided separately from a pension plan, excluding benefits defined as termination offers and benefits.

**SECTION 2.** (a) There shall be in the town of Belmont an OPEB Trust Fund, which shall be under the supervision and management of the town’s contributory retirement board established under paragraph (b) of subdivision (4) of section 20 of chapter 32 of the General Laws. The town treasurer shall be the custodian of the OPEB Trust Fund and may employ an outside custodial service.

(b) Beginning in fiscal year 2008, the OPEB Trust Fund shall be credited with all amounts appropriated or otherwise made available by the town for the purposes of meeting the current and future OPEB costs payable by the town. The OPEB Trust Fund shall be credited with all amounts contributed or otherwise made available by employees of the town for the purpose of meeting future OPEB costs payable by the town. Amounts in the OPEB Trust Fund, including any earnings or interest accruing from the investment of these amounts, shall be expended only for the payment of the costs payable by the town for OPE B in consultation with the town’s contributory retirement board. Subject in each instance to the approval of the town’s contributory retirement board, the town treasurer shall invest and reinvest the amounts in the OPEB Trust Fund not needed for current disbursement consistent with the prudent investor rule; but no funds shall be invested directly in mortgages or in collateral loans. The OPEB Trust Fund shall be subject to the public employee retirement administration commission’s triennial audit.

(c) The board may employ a qualified bank, trust company, corporation, firm or person to advise it on the investment of the OPEB Trust Fund and may pay from the OPEB Trust Fund for the advice and other services determined by the town’s contributory retirement board. Procurement for these services shall be subject to the procurement procedures and rules followed by the town's contributory retirement board for services to the town’s contributory retirement system.

(d) If a civil action is brought against a member of the retirement board, the defense or settlement of which action is made by an attorney employed by the retirement board, the member shall be indemnified for all expenses incurred in the defense of this action and shall be indemnified for damages to the same extent as provided for public employees in chapter 258 of the General Laws if the claim arose out of acts performed by the member or members while acting within the scope of his official duties, but a member of a retirement board shall not be indemnified for expenses incurred in the defense of an action, or damages awarded in an action, in which there is shown to be a breach of fiduciary duty, an act of willful dishonesty or an intentional violation of law by the member.

**SECTION 3.** (a) An actuary, who shall be a member of the American Academy of Actuaries, shall perform an actuarial valuation of the town's OPEB liabilities and funding schedule, as of January 1, 2006, and no less frequently than every second year thereafter. The determinations shall be made in accordance with generally accepted actuarial standards and shall conform to the requirements of GASB 43 and 45 and the actuary shall make a report of the determinations to the town meeting. The report shall, without limitation, detail the demographic and economic actuarial assumptions used in making the determinations, and each report after the first report shall also include an explanation of the changes, if any, in the demographic and economic actuarial assumptions employed and the reasons for the changes.

(b) Beginning in fiscal year 2008, payments for the purposes of meeting the town's costs of OPEB under this act shall be made from the OPEB Trust Fund. Funds in the OPEB Trust Fund shall be segregated from other funds. Disbursements from the OPEB Trust Fund including earnings or interest accruing from the investment of these amounts may only be made based on sections 1 to 3, inclusive.

**SECTION 4.** This act shall take effect upon its passage.

*Approved August 29, 2007.*

### **Chapter 382 of the Acts of 2010**

An Act Relative to the Other Post Employment Benefits Trust Fund of the Town of Belmont.

*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.** Chapter 97 of the acts of 2007 is hereby amended by striking out sections 2 and 3, and inserting in place thereof the following 2 sections:-

Section 2. (a) There shall be, in the town of Belmont a special trust fund to be known as the Belmont Other Post Employment Benefits Trust Fund. The Belmont treasurer shall transfer funds to that trust fund as such funds are appropriated or those received from other sources specifically dedicated to OPEB purposes become available. The trust fund shall be irrevocable as required by GASB 43 and 45. Notwithstanding any general or special law to the contrary, the town of Belmont may appropriate funds in order to offset the anticipated cost of premium or direct payments for OPEB to be made to retired employees of the town and to any eligible surviving spouse or dependents of deceased employees of the town.

(b) Beginning in fiscal year 2008, the trust fund shall be credited with all amounts appropriated or otherwise made available by the town to meet the current and future OPEB costs payable by the town. Interest or other income earned by the trust fund shall be added to and become part of the trust fund. Except as otherwise expressly provided in this act, amounts expended from the trust fund shall be expended only for the costs payable by the town for OPEB.

(c) The Belmont contributory retirement board shall be the custodian of the trust fund and may employ an outside custodial service to hold the monies in the fund. The retirement board and the custodian shall be bonded and the bonding costs shall be paid for out of the trust fund. The Belmont contributory retirement board may invest and re-invest the monies held in the trust fund not required for current disbursement under the investment powers granted to retirement boards under paragraph (g) of subdivision (2) of section 23 of chapter 32 of the General Laws, under the regulations of the public employees retirement administration commission and with any applicable general laws. Monies held in the trust fund shall be segregated from other funds held by the Belmont retirement board and by the town. Trust fund monies shall not be subject to the claims of the town's general creditors. The trust fund shall be subject to the public employee retirement commission's triennial audit and the town's contributory retirement system annual audit.

(d) The Belmont contributory retirement board may employ any qualified bank, trust company, corporation, firm or person to provide advice on the investment of amounts held in the trust fund and may pay for the advice from amounts held in the fund. Procurement for these services shall be subject to the procurement procedures and rules followed by the Belmont contributory retirement board for services to the town's contributory retirement system.

(e) If a civil action is brought against a member of the retirement board, the defense or settlement of which action is made by an attorney employed by the retirement board, the member shall be indemnified for all expenses incurred in the defense of the action and shall be indemnified for damages to the same extent as provided for public employees in chapter 258 of the General Laws if the claim arose out of acts performed by the member while acting within the scope of the member's official duties; provided, however, that a member of a retirement board shall not be indemnified for expenses incurred in the defense of an action, or damages awarded in an action,

in which there is shown to be a breach of fiduciary duty, an act of willful dishonesty or an intentional violation of law by the member. Such indemnification shall be paid from amounts held in the fund.

Section 3. (a) The town shall engage an actuary, who shall be a member of the American Academy of Actuaries, to perform an actuarial valuation of the town's OPEB liabilities and funding schedule, as of January 1, 2006, and no less frequently than every second year thereafter. The determinations shall be made in accordance with generally accepted actuarial standards and shall conform to the requirements of GASB 43 and 45 and the actuary shall make a report of the determinations to the town meeting and include it in the town report. The report shall, without limitation, detail the demographic and economic actuarial assumptions used in making the determinations and each report after the first report shall also include an explanation of the changes, if any, in the demographic and economic actuarial assumptions employed and the reasons for the changes. The cost of the biennial actuarial evaluation shall be at the town's expense.

(b) Beginning in fiscal year 2008, payments for the purposes of meeting the town's cost of OPEB under this act may be made from the trust fund.

**SECTION 2.** This act shall take effect upon its passage.

*Approved, December 1, 2010.*

**Chapter 372 of the Acts of 2010.**

An Act Establishing a Postemployment Benefits Trust Fund in the Town of Wayland

*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.** There shall be in the town of Wayland a fund called the Other Post-Employment Benefits Trust Fund or OPEB Trust Fund, which shall be used to provide postemployment benefits other than pensions, as defined in Governmental Accounting Standards Board, Statements 43 and 45. The fund shall be under the supervision and management of the town administrator and finance director. The town treasurer shall be the custodian of the OPEB Trust Fund.

**SECTION 2.** The OPEB Trust Fund shall be credited with all amounts appropriated or otherwise made available by the town, including any earnings or interest accruing from the investment of these funds, to offset the anticipated cost of health and life insurance contributions

or other benefits for retired employees, their spouses and eligible dependents and the surviving spouses and eligible dependents of deceased retirees.

**SECTION 3.** Amounts in the OPEB Trust Fund shall be expended only for the payment of the costs payable by the town for other postemployment benefits.

**SECTION 4.** The town treasurer shall invest and reinvest the funds prudently, and may, with the approval of the Health Care Security Trust board of trustees created by section 4 of chapter 29D of the General Laws and using criteria and procedures to be adopted by said board of trustees, invest such amounts in the State Retiree Benefits Trust Fund established by section 24 of chapter 32A of the General Laws. The town treasurer may employ any qualified bank, trust company, corporation, firm or person to advise it on the investment of the fund and pay such expense from the fund. The OPEB Trust Fund shall be subject to the public employee retirement administration commission's triennial audit.

**SECTION 5.** This act shall take effect upon its passage.

*Approved, November 17, 2010.*

**From:** Blau, Gary on behalf of DOR DLS Law  
**Sent:** Thursday, January 12, 2012 5:17 PM  
**To:** 'csashin@oakbluffsma.gov'  
**Subject:** FW: 2012-35 - Oak Bluffs - retiree health insurance - Follow Up

**From:** Blau, Gary  
**Sent:** Thursday, January 12, 2012 5:16 PM  
**To:** DOR DLS Law  
**Subject:** 2012-35 - Oak Bluffs - retiree health insurance - Follow Up

Cheryll:

I suggest you contact the town of Belmont to determine if they are receiving employee contributions to its OPEB fund and whether they are doing so by means of a payroll deduction. The statute does not expressly authorize a payroll deduction, but merely provides:

Beginning in fiscal year 2008, the OPEB Trust Fund shall be credited with all amounts appropriated or otherwise made available by the town for the purposes of meeting the current and future OPEB costs payable by the town. The OPEB Trust Fund shall be credited with all amounts contributed or otherwise made available by employees of the town for the purpose of meeting future OPEB costs payable by the town. ... (emphasis added)

The Dukes County special legislation, Chapter 149 of the Acts of 2010, allows the participating towns to appropriate funds to the shared OPEB fund, but does not refer to employee contributions. The terms of the Duke's County OPEB fund are contained in a trust document which we have not seen. Perhaps that agreement refers to a payroll deduction.

Gary A. Blau, Tax Counsel  
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 Boston, MA 02114-9569  
 617-626-2400  
 blau@dor.state.ma.us

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**From:** Beaton, Jodi **On Behalf Of** DOR DLS Law  
**Sent:** Thursday, January 12, 2012 12:02 PM  
**To:** Blau, Gary  
**Subject:** FW: 2012-35 - Oak Bluffs - retiree health insurance

**From:** Cheryll Sashin [mailto:csashin@oakbluffsma.gov]  
**Sent:** Thursday, January 12, 2012 12:03 PM  
**To:** DOR DLS Law  
**Subject:** RE: 2012-35 - Oak Bluffs - retiree health insurance

Gary

Please help me understand the difference between the special legislation and the Town of Belmont's authority to receive contributions from employees.

If they have the Trust established through this special legislation how do they then get authorization to take payroll deductions?

Am I to assume that we are one of two towns now in Massachusetts that had employees contributing to OPEB

The only difference being is that they have special legislation that includes the specific authorization and we do not.

We do have a trust under Dukes County Employers established, but not active. Voted STM 4/16/2009

Cheryll

**From:** Blau, Gary [mailto:blau@dor.state.ma.us] **On Behalf Of** DOR DLS Law

**Sent:** Thursday, January 12, 2012 10:13 AM

**To:** 'Cheryll Sashin'

**Subject:** 2012-35 - Oak Bluffs - retiree health insurance

Cheryll:

As we discussed, once the town has accepted Chapter 32B, which includes Section 9, it must provide group health insurance to eligible retirees, albeit without town contribution. If the town has accepted MGL c. 32B, §9A it must pay 50% of the retiree premiums, and if the town has accepted MGL c. 32B, §9E it may pay more than 50% of retiree premiums. MGL c. 32B and those optional sections, once accepted, may not be revoked. See MGL c. 32B, §10 and MGL c. 4, §4B(c).

Also, with respect to the special OPEB legislation we discussed, see Chapter 97 of the Acts of 2007 for the town of Belmont, which includes a specific authorization to deposit employee contributions to its OPEB fund.

I hope this addresses your concerns.

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**From:** Cheryll Sashin [mailto:csashin@oakbluffsma.gov]

**Sent:** Wednesday, January 11, 2012 10:40 AM

**To:** DOR DLS Law

**Subject:** retiree health insurance

Are municipalities required to offer retirees health insurance benefits?  
Can they dissolve by town meeting vote?

*Cheryll*

Cheryll A. Sashin, CMMC  
Town of Oak Bluffs  
Tax Collector  
P.O. Box 1357  
Oak Bluffs, MA 02557  
508-693-3554 x209

\*\*\*\*\*  
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**From:** Blau, Gary  
**Sent:** Friday, December 02, 2011 10:01 AM  
**To:** 'David Withrow'  
**Subject:** 2011-1330- Orleans - 2011-2012 Session - House Bill 37 OPEB Fund

Dave:

The OPEB law was rewritten effective July 1, 2011 by Sections 49, 50, 57, 206 and 221 of Chapter 68 of the Acts of 2011 (Commonwealth 2012 budget bill), as follows:

**SECTION 49.** Section 24 of said chapter 32A is hereby amended by inserting after the word "system", in line 16, as so appearing, the following words:- and for depositing, investing and disbursing amounts transferred to it under subsection (d).

**SECTION 50.** Said section 24 of said chapter 32A is hereby further amended by striking out subsection (d), as so appearing, and inserting in place thereof the following subsection:-  
 (d) Upon authorization by the board, any political subdivision, municipality, county or agency or authority of the commonwealth may participate in the fund using procedures and criteria to be adopted by the board.

**SECTION 57.** Said chapter 32B is hereby further amended by striking out section 20, as so appearing, and inserting in place thereof the following section:-

Section 20. (a) A city, town, district, county or municipal lighting plant that accepts this section may establish an Other Post-Employment Benefits Liability Trust Fund, and may appropriate amounts to be credited to the fund. Any interest or other income generated by the fund shall be added to and become part of the fund. Amounts that a governmental unit receives as a sponsor of a qualified retiree prescription drug plan under 42 U.S.C. section 1395w-132 may be added to and become part of the fund. All monies held in the fund shall be segregated from other funds and shall not be subject to the claims of any general creditor of the city, town, district, county or municipal lighting plant.

(b) The custodian of the fund shall be (i) a designee appointed by the board of a municipal lighting plant; (ii) the treasurer of any other governmental unit; or (iii) if designated by the city, town, district, county or municipal lighting plant in the same manner as acceptance prescribed in this section, the Health Care Security Trust board of trustees established in section 4 of chapter 29D, provided that the board of trustees accepts the designation. The custodian may employ an outside custodial service to hold the monies in the fund. Monies in the fund shall be invested and reinvested by the custodian consistent with the prudent investor rule established in chapter 203C and may, with the approval of the Health Care Security Trust board of trustees, be invested in the State Retiree Benefits Trust Fund established in section 24 of chapter 32A.

(c) This section may be accepted in a city having a Plan D or Plan E charter, by vote of the city council; in any other city, by vote of the city council and approval of the mayor; in a town, by vote of the town at a town meeting; in a district, by vote of the governing board; in a municipal lighting plant, by vote of the board; and in a county, by vote of the county commissioners.

(d) Every city, town, district, county and municipal lighting plant shall annually submit to the public employee retirement administration commission, on or before December 31, a summary of its other post-employment benefits cost and obligations and all related information required under Government Accounting Standards Board standard 45, in this subsection called "GASB 45", covering the last fiscal or calendar year for which this information is available. On or before June 30 of the following year, the public employee retirement administration commission shall notify any entity submitting this summary of any concerns that the commission may have or any areas in which the summary does not conform to the requirements of GASB 45 or other standards that the commission may establish. The public employee retirement administration commission shall file a summary report of the information received under this subsection with the chairs of the house and senate committees on ways and means, the secretary of administration and finance and the board of trustees of the Health Care Security Trust. ...

**SECTION 206.** Nothing in section 20 of chapter 32B of the General Laws shall affect the validity of any action taken before July 1, 2011 by a city or town that authorizes the contributory retirement system of which the employees of that city or town are members to be the custodian of an Other Post-Employment Benefits Liability Trust Fund. ...

**SECTION 221.** Except as otherwise specified, this act shall take effect on July 1, 2011.

*Approved, July 11, 2011*

These provisions mirror those of the bill the governor proposed and outlined in my February 28, 2011 email to you (as shown below), except that the grandfather provision concerning previously enacted special acts authorizing a town's retirement board to be the fund custodian is now contained in an outside section (206) and not within MGL c. 32B, §20 itself. This eliminated MGL c. 32B, §20(d) from the governor's original submission and moved the language proposed for 32B, §20(e) to MGL c. 32B, §20(d) in the enacted version.

The new version of the statute makes it clear that the fund is not subject to the claims of general creditors, to conform to the GASB requirement. It also allows the funds to be kept by a state board which has charge of the commonwealth's OPEB funds, if the municipality so designates and that board agrees to accept the responsibility. It does not require an actuarial study or updates, and does not require appropriation to the fund or a full-funding schedule, but does require annual filings with PERAC summarizing the OPEB benefit costs and liabilities of the local governmental entity. PERAC is charged with providing information back to the municipality indicating any non-compliance issues with GASB 45 or with PERAC standards. The amended act retains the prudent investor rule authorized in the original OPEB statute.

There is still no mechanism specified in the legislation as to how the funds may be expended, especially in the absence of an actuarial study or funding schedule obligation which would at least include projected annual retiree health insurance expenditure obligations of the town. Funds may presumably be appropriated to the fund by a simple majority vote of town meeting, and since the statute does not provide any town officer specific authority to expend without further appropriation, a simple majority town meeting vote to expend for its purpose would be required. Since the fund is maintained to meet the town's retiree health insurance obligations, town meeting may presumably authorize expenditures for such purposes from the fund directly or by appropriation to an annual budget item for the purpose. If amounts appropriated for retiree health insurance obligations of the town in any given year are not expended, they should be redeposited to the fund. It may make more sense to authorize expenditures directly from the fund in order to continue to accrue interest on the funds until they are actually spent, but that may not be possible if the Health Care Security Trust is the custodian. No regulations or procedures have been put in place by the Health Care Security Trust Board of Trustees concerning the process for selecting the board as a local OPEB custodian, nor the requirements to put money into or take money from the State Retiree Benefits Trust Fund. A press release issued after passage of the OPEB amendments indicates that the Secretary of Administration and Finance is in the process of issuing implementation guidelines. See <http://www.mass.gov/anf/state-to-provide-access-to-investment-vehicle-for.html>.

I hope this addresses your concerns.

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**From:** David Withrow [mailto:dwithrow@town.orleans.ma.us]  
**Sent:** Monday, November 28, 2011 2:31 PM  
**To:** Blau, Gary  
**Subject:** RE: 2011-2012 Session - House Bill 37

Gary,

Anything new on the Trust Fund? I would like to update my Board with the goal of establishing the fund at our next annual town meeting. I'd be interested in your opinion on whether or not most of the bugs have been eliminated, or if you expect more essential changes.

Thanks,

Dave

**From:** Blau, Gary [mailto:blau@dor.state.ma.us]  
**Sent:** Monday, February 28, 2011 6:02 PM  
**To:** David Withrow  
**Subject:** 2011-2012 Session - House Bill 37

Dave: I have cut and pasted Section 5C of House Bill 37 filed by the Governor in January of this year as a supplemental appropriations bill. Section 5C is one of several sections containing general law amendments. This proposed section would make some changes to the municipal OPEB trust fund, as we discussed. Note that I have included Sections 5A & 5B which authorize the state's Health Care Security Trust Board to accept and invest funds from municipalities accepting M.G.L. c. 32B, §20 and choosing to participate in the state investment program. This version would eliminate the requirement of a funding schedule, but generally require a summary of OPEB liabilities be provided to PERAC annually (see new section 20[e]).

### **State Retiree Benefits Trust Fund Amendments**

SECTION 5. (A) Section 24 of chapter 32A of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after the word "system", in line 16, the following words:- and for depositing, investing and disbursing amounts transferred to it under paragraph (d).

(B) Said section 24 of said chapter 32A, as so appearing, is hereby further amended by striking out paragraph (d) and inserting in place thereof the following paragraph: -

(d) Upon authorization by the board, any political subdivision, municipality, county, or agency or authority of the commonwealth may participate in the fund using procedures and criteria to be adopted by the board.

(C) Chapter 32B of the General Laws is hereby amended by striking out section 20, as so appearing, and inserting in place thereof the following section:-

Section 20. (a) A city, town, district, county or municipal lighting plant that accepts this section may establish a separate fund, to be known as an Other Post-Employment Benefits Liability Trust Fund, and may appropriate amounts to be credited to the fund. Any interest or other income generated by the fund shall be added to and become part of the fund. Amounts that a governmental unit receives as a sponsor of a qualified retiree prescription drug plan under 42 U.S.C. section 1395w-132 may be added to and become part of the fund. All monies held in the fund shall be segregated from other funds and shall not be subject to the claims of any general creditor of the city, town, district, county or municipal lighting plant.

(b) The custodian of the fund shall be (i) a designee appointed by the board of a municipal lighting plant or (ii) the treasurer of any other governmental unit, or (iii) if designated by the city, town, district, county or municipal lighting plant in the same manner as acceptance prescribed in this section, the Health Care Security Trust board of trustees established under section 4 of chapter 29D, provided that the board of trustees accepts the designation. The custodian may employ an outside custodial service to hold the monies in the fund. Monies in the fund shall be invested and reinvested by the custodian consistent with the prudent investor rule set forth in chapter 203C, and

may, with the approval of the Health Care Security Trust Board of Trustees, be invested in the State Retiree Benefits Trust Fund established by section 24 of chapter 32A.

(c) This section may be accepted in a city having a Plan D or Plan E charter by vote of the city council; in any other city by vote of the city council and approval of the mayor; in a town by vote of the town at a town meeting; in a district by vote of the governing board; in a municipal lighting plant by vote of the board; and in a county by vote of the county commissioners.

(d) Nothing in this section shall affect the validity of any action, taken before July 1, 2011, by any city or town to authorize the contributory retirement system of which the employees of the city or town are members to be the custodian of such a fund.

(e) Every city, town, district, county and municipal lighting plant shall submit to the public employee retirement administration commission, no later than December 31 of each year, a summary of its other post-employment benefits cost and obligations and all related information required under Government Accounting Standards Board standard 45, in this subsection called "GASB 45", covering the last fiscal or calendar year for which this information is available. Not later than June 30 of the following year, the public employee retirement administration commission shall notify any entity submitting this summary of any concerns that the commission may have or any areas in which the summary does not conform with the requirements of GASB 45 or other standards that the commission may establish. The public employee retirement administration commission shall file a summary report of the information received under this subsection with the chairs of the house and senate committees on ways and means, the secretary of administration and finance, and the board of trustees of the Health Care Security Trust.

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3-20-12

**POLICIES AND PROCEDURES OF THE HEALTH CARE SECURITY TRUST BOARD OF TRUSTEES WITH RESPECT TO THE STATE RETIREE BENEFITS TRUST FUND  
FEBRUARY 2012**

**ARTICLE 1  
DEFINITIONS**

**Authority** shall mean any political subdivision, agency or authority of the Commonwealth, other than a Municipality, which elects to participate in the SRBT Fund pursuant to Section 24(d).

**HCST Board** shall mean the Board of Trustees of the Health Care Security Trust established pursuant to M.G.L. Chapter 29, Section 4.

**M.G.L.** shall mean the Massachusetts General Laws.

**Municipal OPEB Trust Fund** shall mean the Other Post-Employment Benefits Liability Trust Fund established by a Municipality pursuant to Section 20.

**Municipality** shall mean a city, town, district, county, or municipal lighting plant that has accepted Section 20.

**PRIM Board** shall mean the Pension Reserves Investment Management Board, established pursuant to M.G.L. Chapter 32, Section 23(2A) to administer the PRIT Fund.

**PRIT Fund** shall mean the Pension Reserves Investment Trust Fund, established pursuant to M.G.L. Chapter 32, Section 22(8).

**Participant** shall mean a Municipality that has established a Municipal OPEB Trust Fund, has designated the HCST Board as the custodian of the Municipal OPEB Trust Fund pursuant to Section 20, and such designation has been accepted by the HCST Board, or an Authority that has been authorized to participate in the SRBT Fund by the HCST Board pursuant to Section 24(d).

**SRBT Fund** shall mean the state Retiree Benefits Trust Fund established pursuant to Chapter 32A, Section 24, and the monies, amounts and investments held in such Fund.

**Section 20** shall mean M.G.L. Chapter 32B, Section 20, as amended by Chapter 68, Section 57 of the Acts of 2011.

**Section 24(d)** shall mean M.G.L. Chapter 32A, Section 24(d), as amended by Chapter 68, Section 50 of the Acts of 2011.

**State System** shall mean the state employees' retirement system for health care and other non-pension benefits.

**ARTICLE 2  
AUTHORITY OF THE HCST BOARD**

**Section 2.1** Investment of SRBT Fund. Pursuant to M.G.L. Chapter 32A, Section 24(a), the HCST Board is the trustee of the SRBT Fund and is to administer the SRBT Fund for the purpose of depositing, investing and disbursing amounts to meet liabilities of the State System for health care and other non-pension benefits for retired state employees. In accordance with M.G.L. Chapter 29D, Section 4(i), the HCST Board has voted to invest the SRBT Fund in the PRIT Fund. By virtue of that certain Amended and Restated Investment Services Agreement, dated as of October 1, 2011, by and between the HCST Board and the PRIM Board, the assets in the SRBT Fund are invested in the PRIT

Fund General Allocation Account on behalf of the SRBT Fund as a “Purchasing System” under the terms of the PRIM Board Operating Trust Agreement, dated as of September 22, 1998 (the “PRIM Board Operating Agreement”).

**Section 2.2** Custodian for Municipalities. The HCST Board is authorized by Section 20 to be the custodian of Municipal OPEB Trust Funds if it chooses to accept designation by a Municipality. By virtue of Section 20, the HCST Board may approve the investment of monies in a Municipal OPEB Trust Fund in the SRBT Fund.

**Section 2.3.** Election by Authorities to Participate in the SRBT Fund. Pursuant to Section 24(d), the HCST Board may authorize any Authority to participate in the SRBT Fund using procedures and criteria to be adopted by the HCST Board.

**Section 2.4** Acceptance of Designation; Authorization. The HCST Board will accept designation by a Municipality as custodian of a Municipal OPEB Trust Fund and will authorize participation in the SRBT Fund by an Authority on the following conditions:

(a) The Municipality has taken all necessary votes and actions either pursuant to Section 20 or pursuant to its special legislation, to establish a Municipal OPEB Trust Fund, appropriate monies to be credited to the Municipal OPEB Trust Fund and, if applicable, to designate the HCST Board as custodian;

(b) The Municipality understands and agrees that the Municipal OPEB Trust Fund will participate in the SRBT Fund and, as a participant in the SRBT Fund, will be invested in the same investment vehicles as the SRBT Fund and commingled with funds of the State System and other Participants;

(c) The Authority shall have taken all votes and actions required by its enabling legislation and governing documents in order to participate in the SRBT Fund and to appropriate monies to be invested in the SRBT Fund.

(d) The Municipality or the Authority understands and agrees that the HCST Board has determined to invest the SRBT Fund in the PRIT Fund General Allocation Account;

(e) The Municipality or the Authority understands and agrees that the PRIM Board is charged with supervision and management of the PRIT Fund General Allocation Account, and pursuant to an Administrative Services Agreement, dated as of October 1, 2011, by and between the HCST Board and the PRIM Board, provides or causes its custodian, The Bank of New York Mellon Trust Company, N.A., to provide all valuation, reporting and other recordkeeping services to the SRBT Fund and the Participants;

(f) The Municipality or the Authority enters into an agreement regarding the above conditions with the HCST Board satisfactory in all respects to the HCST Board;

(g) The Municipality or the Authority has presented evidence to the HCST Board of its plan for funding its Other Post-Employment Benefits liabilities;

### **ARTICLE 3 PRIT FUND OPERATIONAL MATTERS**

**Section 3.1** Separate Investment Funds. The SRBT Fund consists of two investment funds, known as the “Capital Fund” and the “Cash Fund.” Each of these Funds is separately held, managed, administered, valued, invested, reinvested, distributed, accounted for and otherwise dealt with by the PRIM Board. The Capital Fund portion of the SRBT Fund is invested in the General Allocation

Account of the PRIT Fund. Portions of the SRBT Fund are invested in the Cash Fund on a temporary basis, in order to provide liquidity. References to the “SRBT Fund” shall be deemed to refer to both the Capital Fund and the Cash Fund, and each of them.

**Section 3.2** Investments of the Capital Fund. The HCST Board shall direct the PRIM Board to cause the Capital Fund portion of the SRBT Fund assets to be invested and reinvested in accordance with the standards set forth in these Policies and Procedures and as required by applicable law. The HCST Board has, as of the date hereof, determined to invest the Capital Fund of the SRBT Fund in the General Allocation Account of the PRIT Fund.

**Section 3.3** Investments of the Cash Fund. The HCST Board shall direct the PRIM Board to cause the cash deposits on behalf of the State System and Participants to be received, maintained and invested in the Cash Fund in such a way as to meet any liquidity requirements of the State System and the Participants, of which the PRIM Board has notice. To the extent not needed for current or future liquidity requirements, the HCST Board may direct the PRIM Board to use funds credited to the account of the SRBT Fund, on behalf of the State System or any Participant to purchase (on the first (1<sup>st</sup>) business day of any calendar month) Units of participation in the General Allocation Account of the PRIT Fund for the account of the SRBT Fund.

**Section 3.4** Separate Accounts of Capital Fund. The PRIM Board has divided the beneficial interest in the Capital Fund of the PRIT Fund into separate accounts (“Accounts”) in accordance with Article 3 of the PRIM Board Operating Agreement. Each account is a separate component of the assets of the Capital Fund and the holders of Units of participation representing the beneficial interest in the assets of an Account are considered “Unit Holders” of such Account. The SRBT Fund is a Unit Holder of the General Allocation Account. The PRIM Board holds the Account and all deposits received for the acquisition of Units in the General Allocation Account and all the assets in which such deposits are invested or reinvested and all interest, dividends, income, earnings, profits and gains therefrom and proceeds thereof are held by the PRIM Board in trust for the benefit of the SRBT Fund as a holder of Units of participation in the General Allocation Account. The SRBT Fund does not have any claim to the assets of any Account in which it is not a Unit Holder. The assets of a particular Account are charged with the liabilities and expenses attributable to the Account.

## ARTICLE 4

### PARTICIPATION IN AND WITHDRAWAL FROM THE SRBT FUND

**Section 4.1** Acceptance of Deposits. The participation of the State System and any Participant in the SRBT Fund shall be subject to the provisions of policies and procedures to be adopted by the HCST Board from time to time. All deposits accepted from the State System or any such Participant or otherwise, together with the income therefrom, shall be held, managed and administered pursuant to these policies and procedures for the sole purpose of meeting the liabilities of the State System and the Participants for the health care and other non-pension benefits of their retirees.

**Section 4.2** Conditions of Participation. The HCST Board shall direct the PRIM Board to accept deposits on behalf of the State System and from Participants into the Cash Fund at any time and into the General Allocation Account on the first (1<sup>st</sup>) business day of the next calendar month or as the HCST Board and PRIM Board may otherwise determine.

**Section 4.3** Allocation of Deposits. Deposits shall be allocated by the PRIM Board to the General Allocation Account and credited to the SRBT Fund.

**Section 4.4** Participation Based on Current Valuation. Each purchase, redemption or withdrawal shall be made upon the basis of the value of the PRIT Fund and its Units of participation, determined as of a Valuation Date in the manner set forth in PRIM Board Operating Agreement. Units of participation shall be purchased by the HCST Board, on behalf of the State System, and by

Participants upon deposit in the SRBT Fund in the PRIT Fund and shall be redeemed from the HCST Board or such Participants upon withdrawal from the SRBT Fund in the PRIT Fund.

**Section 4.5** Payments upon Issue and Redemption of Units of Participation.

(a) On the payment on behalf of the State System or by a Participant in cash into the SRBT Fund of an amount equal to the total value of the Units to be issued, the HCST Board shall cause the PRIM Board to issue Units of participation as of the first day of the following calendar month.

(b) Upon a partial redemption of Units of participation by the HCST Board, on behalf of the State System, or by a Participant, the PRIM Board shall pay to the HCST Board or such Participant, as the case may be, in cash, an amount equal to the total value of the Units redeemed in accordance with Section 4.6 below.

(c) Upon a total redemption of Units of participation by the HCST Board, on behalf of the State System, or by a Participant, the PRIM Board shall pay to the HCST Board or such Participant, as the case may be, in cash, an amount equal to the total value of the Units redeemed in accordance with Section 4.6, below.

**Section 4.6** Procedure for Redemptions and Withdrawals. The HCST Board or a Participant may, from time to time, request the PRIM Board to redeem its Units of participation, either partially or fully, by giving thirty (30) days' prior written notice to the PRIM Board, with a copy to the HCST Board. The PRIM Board shall approve or deny such request within thirty (30) days of receipt of such notice. If such request is approved, in the case of a partial redemption, distribution of the amount requested shall be made on the first (1<sup>st</sup>) business day of the calendar month following approval by the PRIM Board. In the case of a total redemption, upon approval, distribution of an amount equal to approximately 70% of the total value of the Units will be made by the PRIM Board on the first (1<sup>st</sup>) business day of the calendar month following approval by the PRIM Board. The balance will be distributed approximately three weeks after the last day of the then current month. The PRIM Board may deny such request only if there is insufficient liquidity in the SRBT Fund to meet such request and projected reasonable liquidity requirements.

## **ARTICLE 5 UNITS OF PARTICIPATION; VALUATION OF UNITS**

**Section 5.1** Division Into Units. The beneficial interest of each Participant in the Capital and Cash Funds or the General Allocation Account shall be represented by Units. Each Unit of the General Allocation Account shall be of equal value to every other Unit of such Account, each Unit of the Cash Fund shall be of equal value to every other Unit of the Cash Fund, and each Unit of each such Fund or Account shall be without priority or preference one over the other. The PRIM Board shall evidence ownership of Units in the PRIT Fund by keeping books in which shall be clearly recorded the number of Units of the PRIT Fund standing to the credit of the SRBT Fund and each Participant therein. The PRIM Board shall not issue any certificates of such Units. The PRIM Board may from time to time divide or combine Units of the Capital Fund or Cash Fund or any Account into a greater or lesser number, provided that the proportionate interest of each Purchasing System in each such Fund or Account is not thereby changed. Fractional shares of Units may be credited to the SRBT Fund and Participant accounts.

**Section 5.2** Determination of Unit Values. On each prescribed Valuation Date (or each additional Valuation Date designated by the PRIM Board), the PRIM Board shall determine, or cause to be

determined, the value of the General Allocation Account, and the Units of such Account, in the manner set forth in the PRIM Board's Operating Trust Agreement.

**Section 5.3** Allocation to SRBT Fund. All of the assets contained in the SRBT Fund immediately prior to the first deposit into the SRBT Fund by a Participant that is not the State System, shall be allocated to the account of the State System.

**Section 5.4** Management and Ownership of Assets. Neither the HCST Board, on behalf of the State System, nor any Participant shall be deemed to have a severable ownership interest in any individual asset of the SRBT Fund or PRIT Fund, but the SRBT Fund shall have an undivided interest in the PRIT Fund General Allocation Account or other Account to which its deposits have been allocated and shall share with the others in the income, profits and losses thereof as provided herein.

## **ARTICLE 6 VALUATION OF UNITS**

**Section 6.1** Valuation of Assets of the Capital Fund. The valuation of the assets of the SRBT Fund in the General Allocation Account shall be done by the PRIM Board utilizing the methods set forth in the PRIM Board Operating Agreement.

**Section 6.2** Valuation of Assets of the Cash Fund. The valuation of the assets of the SRBT Fund's Cash Fund, and each Participant's share thereof, shall be done by the PRIM Board utilizing the methods set forth in the PRIM Board Operating Agreement.

## **ARTICLE 7 ADMINISTRATION**

**Section 7.1** Statements and Accounts. The PRIM Board shall cause statements of assets and transactions to be prepared and distributed to the HCST Board and to each Participant in the SRBT Fund. Annually, within ninety (90) days after the close of the SRBT Fund's fiscal year, the HCST Board shall cause the PRIM Board to furnish a written account of the operation of the SRBT Fund for the preceding fiscal year to the HCST Board and each Participant. Any Participant to which an account is furnished may approve such account by an instrument in writing delivered to the HCST Board. If objections to specific items in such account are filed with the HCST Board within sixty (60) days after the account has been furnished and the HCST Board believes such objections to be valid, the HCST Board will cause the PRIM Board to adjust the account in such manner as it deems equitable under the circumstances. The HCST Board and each Participant to which the PRIM Board furnishes an account shall be notified by the PRIM Board of any adjustments so made if:

(a) all Participants to which such account is furnished approve such account, or

(b) no objections to specific items in such account are filed by any Participant with the HCST Board within sixty (60) days after the account has been furnished, or

(c) objections to specified items in such account are filed with the HCST Board within sixty (60) days after the account has been furnished, and the PRIM Board gives no notice of any adjustment to the account within one hundred and fifty (150) days after such account has been furnished, then, and in any of said events, the account of the PRIM Board, with respect to all matters contained therein (as originally furnished if no adjustment was made, or as adjusted if an adjustment was made), shall be deemed to have been approved by all Participants.

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## **Illustrative Special Acts Involving Municipal Finance Issues**

### **Chapter 7 of the Acts of 2011**

An Act Providing for the Appointment of a Treasurer-Collector in the Town of Barre

*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.** Notwithstanding any general or special law or rule or regulation to the contrary, there shall be a treasurer-collector for the town of Barre. The treasurer-collector shall have all the powers, perform the duties and be subject to the liabilities and penalties now or hereafter conferred and imposed by law on town treasurers and town collectors of taxes. The treasurer-collector shall be appointed and may be removed by a majority vote of the board of selectmen of the town. The board of selectmen shall appoint a treasurer-collector as an employee at will for a term not to exceed 3 years. The board of selectmen may establish an employment agreement with the treasurer-collector for salary, fringe benefits and other conditions of employment, including, but not limited to, severance pay, reimbursement for expenses incurred in the performance of the duties of the office, liability insurance and conditions of discipline, termination, dismissal, reappointment, performance standards and leave. The position of treasurer-collector shall be exempt from the provisions of the town's personnel by-law. A vacancy in the office shall be filled in a like manner for the unexpired portion of the term.

**SECTION 2.** Notwithstanding section 1, upon the effective date of this act, the positions of elected town treasurer and elected tax collector shall be abolished and the terms of the officers holding these offices shall be terminated. The board of selectmen shall appoint a treasurer-collector in accordance with section 1.

**SECTION 3.** This act shall take effect upon its passage.

*Approved, April 1, 2011.*

### **Chapter 20 of the Acts of 2011**

An Act Establishing an Appointed Treasurer-Collector Position in the Town of Eastham

*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.** Section 3-8 of the charter of the town of Eastham, which is on file in the office of the archivist of the commonwealth as provided by section 12 of chapter 43B of the General Laws, is hereby amended by striking out subsections E and F.

**SECTION 2.** The introductory paragraph of section 4-4 of said charter is hereby amended by inserting after the words “fire chief” the following words:-, a town treasurer-collector.

**SECTION 3.** Subsection D of said section 4-4 of said charter is hereby amended by striking out the word “All” and inserting in place thereof the following words:- With the exception of the appointment of the town treasurer-collector, all.

**SECTION 4.** Said section 4-4 is hereby further amended by adding the following subsection:-

**E.** Appointment of the town treasurer-collector shall become effective no later than the fifteenth day following the day on which notice of the proposed appointment is filed with the finance committee and the board of selectmen, unless 5 members of the finance committee and 3 members of the board of selectmen shall vote to reject such an appointment within that 15-day period.

**SECTION 5.** The initial appointment of the town treasurer-collector shall become effective upon the expiration of the term of the elected town treasurer-collector occurring at least 1 year after the effective date of this act or upon the resignation or retirement of the elected town treasurer-collector, if earlier.

**SECTION 6.** Notwithstanding section 42C of chapter 54 of the General Laws or any other general or special law or town by-law to the contrary, the following question shall be placed upon the official ballot and submitted to the voters of the town of Eastham at the next annual or special town election:

“Shall an act passed by the general court in the year 2011 entitled ‘An Act Establishing an Appointed Town Treasurer-Collector Position in the Town of Eastham’ be accepted?”

If a majority of votes cast in answer to the question is in the affirmative, this act shall take effect in the town of Eastham, but not otherwise.

**SECTION 7.** This act shall take effect upon its passage.

*Approved, May 4, 2011.*

[Note – The town election to adopt the special act has not yet taken place. The special act was submitted as H. 5044 in 2010 and resubmitted as H. 3257 in 2011]

## **Chapter 29 of the Acts of 2011**

### **An Act Relative to the Falmouth Affordable Housing Fund.**

*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.** Notwithstanding any general or special law to the contrary, the town of Falmouth may establish and maintain a special trust fund to be known as the Falmouth Affordable Housing Fund, hereinafter referred to as the “fund”. The trustees of the fund shall be the board of selectmen. Monies in the fund may be expended at the direction of the board of selectmen for the purpose of promotion, expansion and retention of the affordable housing inventory in the town of Falmouth, including costs and expenses associated with research, acquisition, creation, construction, rehabilitation, relocation, program administration and with legal and engineering fees incurred in connection with this purpose.

**SECTION 2.** The powers of the board of selectmen, as trustees of the fund shall be carried out in furtherance of the purposes set forth in this act and shall include the following:

(a) To accept and receive real property, personal property or money by gift, grant, contribution, devise or transfer from any person, firm, corporation or other public or private entity including, but not limited to, money, grants, funds or other property tendered to the trust in connection with any ordinance, by-law, general or special law or from any other source including: money from chapter 44B of the General Laws; repayment of loans or return of funds for breach of grant conditions; and any funds appropriated by town meeting.

(b) To make grants or loans from the fund on such terms and conditions as the board of selectmen deem appropriate for the purpose of promotion, expansion and retention of the affordable housing inventory in the town of Falmouth, including costs and expenses associated with research, acquisition, creation, construction, rehabilitation, relocation and program administration and with legal and engineering fees incurred in connection with this purpose. Grants or loans from the fund shall be authorized by an affirmative vote of the board of selectmen only after recommendation from the community preservation committee. Selectmen may accept, reject, amend to reduce or return for further study such recommendations from the committee. If the community preservation committee ceases to exist and no successor body is established, the board of selectmen may appoint a successor committee to serve in its place and stead or the board of selectmen may assume the responsibility therefor.

(c) To establish guidelines for the fund, which may be amended from time to time by the board of selectmen upon recommendation from the community preservation committee or the successor committee as provided under paragraph (b), for uses consistent with this act. The guidelines may provide for rules, regulations or procedures for the administration of the fund and for fund loan or grant eligibility.

**SECTION 3.** Notwithstanding any general or special law to the contrary, all monies paid into the fund from any source shall be paid directly into the fund without specific appropriation and may be expended for the purposes set forth in this act without further appropriation by town meeting. All monies remaining in the fund at the end of any fiscal year, whether or not expended by the trustees within 1 year of the date such monies were appropriated into the fund, shall remain fund property.

**SECTION 4.** The town treasurer shall be the custodian of the fund and shall invest the funds in a manner authorized by sections 54, 55, 55A and 55B of chapter 44 of the General Laws. Any income or proceeds received from the investment of funds shall be credited to and become part of the fund.

**SECTION 5.** This act shall take effect upon its passage.

*Approved, May 20 , 2011.*

### **Chapter 214 of the Acts of 2011**

An Act Authorizing the City of Medford to Increase Fees for Special Details Performed by Public Employees in the City.

*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.** Notwithstanding section 53C of chapter 44 of the General Laws or any general or special law, rule or regulation to the contrary, the city of Medford may impose a fee not to exceed 15 per cent of the cost to the city of Medford for services performed by its employees on off-duty work details which are related to the employee's regular employment or for special detail work performed by persons where the detail is not related to regular employment.

**SECTION 2.** The fee imposed under section 1 may be increased by an additional 15 per cent of the cost to the city of Medford as described in said section 1 if it is not paid within 21 days of the date that the initial fee becomes due and payable to the city of Medford.

**SECTION 3.** This act shall take effect upon its passage.

*Approved, December 21 , 2011.*

### **Chapter 80 of the Acts of 2012**

An Act Authorizing the Town of Kingston to Install, Finance and Operate Wind Energy Facilities

*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.** Chapter 352 of the acts of 2008 is hereby amended by striking out section 5 and inserting in place thereof the following section:-

Section 5. There shall be established in the town of Kingston a renewable energy enterprise fund, to which section 53F½ of chapter 44 of the General Laws shall apply, except as provided herein,

for the receipt of all funds received by the town in connection with the operation of any renewable energy facility which the town is authorized by law to operate, including, but not limited to, the funds received for: the sale of actual energy produced; the sale of energy credits received; and the lease of the property upon which a facility is located, other than the proceeds of bonds or notes issued therefor (“renewable energy receipts”). Following payment of all amounts due under third party power purchase agreements established under the general authorizations of this act, 25 per cent of the remaining renewable energy receipts shall be reserved to pay costs of operation and maintenance of any renewable energy facilities, existing or to be created, on any town-owned property or facility including schools, to pay costs of future repairs, extensions, reconstruction, enlargements, additions and improvements thereto, and to pay the principal and interest on any bonds or notes issued therefor and to fund the loan opportunities and grant fund established under section 5A. The remaining 75 per cent of the renewable energy receipts shall be deposited into the general fund for any municipal purpose.

The board of selectmen of the town of Kingston shall be the appropriate local entity for the purposes of estimating the income and proposing a line-item budget for the enterprise fund. This budget may include amounts to be appropriated to a capital reserve fund to be established within the enterprise fund which may be expended for capital purposes of the enterprise, including the costs of extraordinary repairs, extensions, reconstruction, enlargements and additions to the alternative energy facilities, existing or to be created, on any town owned property or facility including schools. Funds appropriated to the capital reserve fund may accumulate from year to year; provided, however, that the 25 per cent of funds to be reserved shall not exceed \$100,000 per year; and provided further, that the total amount of the fund shall not exceed \$500,000 at the end of any fiscal year. Any funds in excess of such amounts shall be deposited in the general fund. Any funds remaining in the enterprise fund, at the end of each fiscal year in excess of the amounts required to meet the obligations of the fund and the funding of the loan opportunities and grant fund established under section 5A, other than amounts in the capital reserve fund, shall remain in the enterprise fund for allocation in any succeeding fiscal years and shall not be allocated to the general fund.

**SECTION 2.** Said chapter 352 is hereby further amended by inserting after section 5 the following section:-

Section 5A. There shall be established in the town of Kingston a loan opportunities and grant fund from which citizens may apply for grants for renewable energy improvements to privately owned property, including, but not limited to: energy conservation measures; alternative energy methods and operations; or development of such improvements as may be considered appropriate by the Renewable Energy Grant and Loan Opportunities Committee. The board of selectmen of the town of Kingston shall appoint a Renewable Energy Grant and Loan Opportunities Committee which shall be responsible for the administration of the loan opportunities and grant fund to consist of 5 members, 1 of whom shall be a member of the

finance committee, 1 of whom shall be a member of the board of selectmen of the town of Kingston, 1 of whom shall be a member of the green energy committee, 1 of whom shall be a member of the capital committee and 1 of whom shall be a citizen at large. The board of selectmen of the town of Kingston may also appoint 1 additional member who shall serve in an ex officio capacity. Each member shall serve for a term of 2 years and may be reappointed at the discretion of the board of selectmen of the town of Kingston. The Renewable Energy Grant and Loan Opportunities Committee shall adopt, following at least 14 days notice and a public hearing, rules and regulations establishing the qualifications for receipt of grants from the fund, including, but not limited to, grants for interest and processing fees which may be associated with renewable energy loans issued by various third party lenders and the operations and administration of the committee.

*Approved, April 18, 2012.*

### **Chapter 352 of the Acts of 2008**

An Act Authorizing the Town of Kingston to Install, Finance and Operate Wind Energy Facilities

*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.** Notwithstanding any general or special law to the contrary, the town of Kingston may design and install wind energy facilities at its wastewater treatment facility on Cranberry road in the town, and other such sites as approved by the town, to prepare and improve such sites, acquire all equipment necessary for the wind energy facilities, to make improvements and extraordinary repairs to the facilities, and pay all other costs incidental and related thereto.

**SECTION 2.** The town of Kingston may issue from time to time bonds or notes in order to finance all or a portion of the costs of the wind energy facilities authorized pursuant to section 1. Notwithstanding any provisions of chapter 44 of the General Laws to the contrary, the maturities of any such bonds issued by the town of Kingston hereunder either shall be arranged so that for each issue the annual combined payments of principal and interest payable in each year, commencing with the first year in which a principal payment is required, shall be as nearly equal as practical in the opinion of the town treasurer, or shall be arranged in accordance with a schedule providing for a more rapid amortization of principal. The first payment of principal of each issue of bonds or of any temporary notes issued in anticipation of the bonds shall be not later than 5 years from the anticipated date of commencement of regular operation of the wind energy facilities financed thereby, as determined by the town treasurer and the last payment of principal of the bonds shall be not later than 25 years from the date of the bonds. Indebtedness incurred under this act shall not be included in determining the limit of indebtedness of the town under section 10 of said chapter 44 but, except as otherwise provided herein, shall be subject to

said chapter 44.

**SECTION 3.** Notwithstanding any general or special law to the contrary, the town of Kingston may operate any wind energy facilities installed pursuant to section 1, sell any electricity generated from such facilities and sell any other marketable products resulting from its generation of wind energy at such facilities or from its generation of any type of renewable energy at any renewable energy facility which the town is authorized by law to operate, including electronic certificates created to represent the generation attributes as defined under 225 CMR 14.02, of each megawatt hour of energy generated by the wind energy facilities or any such other renewable energy producing facilities. The board of selectmen of the town of Kingston may enter into contracts on behalf of the town of Kingston for the sale of electricity and energy facilities with such parties and upon such terms and conditions as the board of selectmen determines to be in the best interests of the town of Kingston.

**SECTION 4.** The town of Kingston shall procure any services required for the design, installation, improvement, repair and operation of the wind energy facilities authorized pursuant to this act, and the acquisition of any equipment necessary in connection therewith, in accordance with the procurement requirements of chapter 30B of the General Laws. The town of Kingston may procure any such services and equipment together as a single procurement or as separate procurements thereunder.

**SECTION 5.** There shall be established in the town of Kingston a wind facilities enterprise fund, to which the provisions of section 53F½ of chapter 44 of the General Laws shall apply, except as provided herein, for the receipt of all revenues from the operation of the wind energy facilities authorized pursuant to this act and from any other renewable energy producing facilities which the town is authorized by law to operate and all moneys received for the benefit of the wind energy facilities and any such other renewable energy facilities, other than the proceeds of bonds or notes issued therefor. Such receipts shall be used to pay costs of operation and maintenance of the wind energy facilities and any such other renewable energy facilities, to pay costs of future repairs, extensions, reconstruction, enlargements, additions and improvements thereto, and to pay the principal and interest on any bonds or notes issued therefor. The board of selectmen shall be the appropriate local entity for purposes of estimating the income and proposing a line-item budget for the enterprise. This budget may include amounts to be appropriated to a capital reserve fund to be established within the enterprise fund which may be expended for capital purposes of the enterprise, including the costs of extraordinary repairs, extensions, reconstruction, enlargements and additions to the wind energy facilities. Funds appropriated to the capital reserve fund may accumulate from year to year, subject to appropriation by the town. Any funds remaining in the enterprise fund, at the end of each fiscal year in excess of the amounts required to meet the obligations of the fund, other than amounts in the capital reserve fund, and which would otherwise be treated as surplus revenue pursuant to section 53F½ of chapter 44 of the General Laws, shall be returned to the general fund of the

town, without any further action of the town, and shall be available for appropriation for any municipal purpose. [Replaced by St. 2012, c. 80, s. 1]

[Section 5A added by St. 2012, c. 80, s. 2]

**SECTION 6.** This act shall take effect upon its passage.

*Approved October 8, 2008*

## General Local Governance Reference Materials

### From November 2009 City & Town

DEPARTMENT OF REVENUE DIVISION OF LOCAL SERVICES TECHNICAL ASSISTANCE SECTION

FOR MORE INFORMATION EMAIL: [tacontact@dor.state.ma.us](mailto:tacontact@dor.state.ma.us)

### What is Home Rule?

Home Rule is sometimes thought of as a relatively recent concept and unique to Massachusetts, but its roots actually date back to the 1700s and its relevancy extends throughout the nation. Missouri was the first state to adopt a Home Rule provision in 1875, followed by California, Washington and Wisconsin between 1879 and 1898. In Massachusetts, Home Rule authority was granted to cities and towns in 1966. Today, almost all states have adopted Home Rule provisions which, to varying degrees, are intended to enhance self-governance for cities, towns and counties.

The American Revolution confirmed the rights of the people to govern themselves. However, as the mid-1800s approached, corporations were drawn into the debate, and distinctions were made between the rights of municipal corporations (i.e., cities and towns) and private corporations. In many higher court decisions, the right to self-rule came under attack as railroad companies, whose lawyers were well entrenched at the state level, faced resistance as they pushed to extend rail lines across town boundaries. Then, with emergence of the so-called Dillon Rule, the struggle ensued, in earnest, between advocates of local autonomy and standard bearers for state supremacy. In 1868, an Iowa Supreme Court Justice, John F. Dillon, put forward rules for interpreting the relationship between state law and local law when they came into conflict (*Clinton v. Cedar Rapids and Missouri River R.R.* - 24 Iowa 455, 1868). The intent and effect was to narrow the scope of municipal authority.

The Dillon Rule states that: "A municipal corporation possesses and can exercise the following powers and no others: First, those granted in express words (from the state); second, those necessarily implied or necessarily incident to the powers expressly granted; third, those absolutely essential to the declared objects and purposes of the corporation—not simply convenient, but indispensable; and fourth, any fair doubt as to the existence of a power is resolved by the courts against the corporation."

The United States Supreme Court adopted the Dillon Rule in 1907 (*Hunter v. City of Pittsburgh* - 207 U.S. 161, 178-79) stating: "Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them . . . The state, therefore, at its pleasure, may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation . . . In all these respects the state is supreme."

Under the Dillon Rule, Massachusetts municipalities were among those that were viewed as political subdivisions or creatures of the state. As a practical matter, this meant that cities and towns received their right to organize from the state and had no authority to act other than in ways granted by the General Court, or as implied by powers conveyed. Municipalities were permitted, in a limited way, to enact local laws provided the provisions were “not repugnant” to the state constitution, but all local laws were subject to annulment by the General Court.

With the adoption of Amendment Article 89 and M.G.L. Ch. 43B in 1966, Massachusetts created some separation from the Dillon Rule. In general, a city or town in the Commonwealth can exercise a power or function through the approval of its legislative body (town meeting, city council or town council) and its voters. They can exercise any power through the adoption of an ordinance, by-law or charter that the state legislature has the authority to delegate. In the strongest exercise of Home Rule rights, communities can enact charters (through a charter commission process), without state approval, in order to organize local government in a way that best meet the needs of their citizens.

However, there are significant limitations. Despite Home Rule, some local actions require approval of the state legislature. Others are allowed only through local acceptance of state statutes. In every instance, the legal doctrine of pre-emption prevails. That is, a provision of local law will stand only so long as it is not inconsistent with the state constitution or general laws. Lastly, specific constitutional language (Amendment Article 89, Section 7) reserves to the state sole authority to regulate elections; levy, assess and collect taxes; borrow money or pledge a municipality’s credit; dispose of parkland; enact private or civil laws; and impose criminal penalties.

The initial responsibility to determine whether adopted local provisions may stand rests with the State Attorney General and specifically with the Municipal Law Unit within that office.

As explained on the Municipal Law Unit website, “whenever a town adopts or amends its general by-laws or zoning by-laws, within 30 days of adjournment of town meeting, the Town Clerk is required to submit them to the Attorney General for review and approval. The Attorney General then has 90 days in which to decide whether the proposed amendments are consistent with the constitution and the laws of the Commonwealth. If the Attorney General finds an inconsistency between the proposed amendments and state law, the amendments or portions thereof will be disapproved. The Municipal Law Unit is responsible for undertaking this review and for issuing a written decision approving or disapproving by-law amendments. The Municipal Law Unit does not, however, review proposed city ordinances.

In regard to charters, “whenever a city or town seeks to adopt or amend its charter pursuant to the Home Rule Procedures Act (General Laws, Chapter 43B), the proposed charter or charter amendments must be submitted to the Attorney General for his opinion as to the consistency between the charter (or charter amendments) and state law. The

Attorney General then has 28 days in which to make this determination. The Municipal Law Unit is responsible for undertaking this review and for issuing a written decision.”

Clearly, Home Rule, or self-governance, exists in Massachusetts when a city or town adopts a charter through the approval of its legislative body and its electorate. Beyond this charter commission process, however, the extent of Home Rule is limited. Today, as municipalities struggle financially, they are more frequently seeking to generate new revenue sources, as well as to act on seemingly routine matters, only to find that they lack the requisite authority to do so.

For a city or town, the process of drafting, authorizing, filing and waiting for the approval of a special act creates financial, administrative and political burdens. For the Massachusetts Legislature, the sheer volume of special acts overwhelms the docket of each chamber and diverts time and attention from issues of global importance to the Commonwealth. According to the Massachusetts General Court website, during each annual session since 2001, approximately 70 percent of all legislation approved, or 230 new laws on average, have been special acts. Among requests, cities and towns must seek the State’s permission to issue liquor licenses; to reorganize government or manage local elections; to reserve their money in special revenue funds; and to convey or lease certain property.

Ultimately, more than the Dillon Rule, it is the General Court’s exclusive constitutional right to legislate on certain matters and, in particular, the doctrine of pre-emption that work to restrict local self-rule and to perpetuate the ongoing involvement of the state in municipal affairs.

The Official Website of the Department of Revenue (DOR)

## Department of Revenue

Home Local Officials



### Charting a Route for Charter Change

Massachusetts citizens should take pride in the fact that the [Constitution of the Commonwealth](#) is the oldest written Constitution in continuous use in the world - a document that predates and provides the basis for our [federal Constitution](#).

What many people in the state may not realize is that there is a good chance that their local government already existed at the time of the drafting of the Massachusetts Constitution in 1780. In fact, 110 of the Commonwealth's current 351 cities and towns - almost a third! - had been granted charters that marked the geographical boundaries of the community and established a rudimentary local government before the Massachusetts Constitution went into effect.

Just as [the boundaries](#) were in many cases quite different, the structure and role of local government have evolved too. When the citizens of a community want to change the charter that serves as the "constitution" of their local government in order to meet evolving responsibilities and demands, they must follow one of the charter change processes spelled out in the Massachusetts Constitution.

#### Definition of "Charter"

"Charter, when used in connection with the operation of city and town government shall include a written instrument adopted, amended or revised pursuant to the provisions of chapter forty-three B which establishes and defines the structure of city and town government for a particular community and which may create local offices, and distribute powers, duties and responsibilities among local offices and which may establish and define certain procedures to be followed by the city or town government. Special laws enacted by the general court applicable only to one city or town shall be deemed to have the force of a charter and may be amended, repealed and revised in accordance with the provisions of chapter forty-three B unless any such special law contains a specific prohibition against such action." ([MGL, Chapter 4, Section 7](#))

#### The Two Main Charter Change Routes

The [Home Rule Amendment](#) to the state's constitution provides several routes for preparing or revising a charter. The most familiar are:

- Electing a home rule charter commission
- Petitioning the state legislature for special legislation ("the home rule petition").

While the two routes to charter change lead to the same aim - a new or revised charter - the procedures and timeline are quite different.

Option one is election of a home rule charter commission, which leads to what is often referred to as a "home rule charter." A commission of nine members may be elected to "frame a charter" or "revise its present charter" for a city or town upon petition of 15 percent of the municipality's voters. Chapter 43B of the Mass General Laws provides a specific framework, timeline, and set of responsibilities for the charter commission to fulfill. The commission has a maximum of 16 months to produce a preliminary report, and a maximum of 18 months to produce a final report. The statute requires that two public hearings be held. Both the preliminary and final reports must be printed and distributed.

Beyond the provisions of Chapter 43B, the commission as an elected local body operates under the provisions of [MGL, Chapter 39, Section 23](#) ("the open meeting law") [1]. The charter commission may examine any and all features relating to the municipality's structure and may propose a form of government that they determine will be responsive to the city or town.

#### About the Home Rule Amendment

The Home Rule Amendment (HRA) provides limited home rule to Massachusetts cities and towns. Simply stated, the limitations encompass those powers that the state has reserved to itself (e.g., conduct of elections, determination of what constitutes a crime), and continues to have the authority to impose uniform state laws applicable to all cities, all towns, or a class thereof. When the [Home Rule Procedures Act](#) (MGL, c. 43B) was amended in 1984 by the addition of Section 20, a modest amount of flexibility was included to mitigate the "uniform state law" provision of the HRA as follows:

- Most local officers, boards, and commissions may be either elected or appointed. (Mayors, boards of

selectmen, legislative bodies, school committees, and the moderator must be elected.)

- Appointments may be made by the official named in the charter
- Terms of office can be determined by the charter, not to exceed five years
- Appointments may be confirmed by the official(s) named in the charter
- Boards can be of any size, with the caveat that they contain an odd number of members
- Powers, duties, and responsibilities of municipal offices and departments may be divided or merged according to procedures provided in the charter

Option two is the "home rule petition" route, which leads to what is often referred to as a "special act charter." Section 8 of the Home Rule Amendment provides that cities and towns may use a "home rule petition" to achieve change in structure. This "petition" route was the only route available for cities and towns to make structural change prior to passage of the Amendment.

Section 8 does not provide detailed instructions regarding the preparation of a "home rule petition" charter. A mayor or board of selectmen may appoint a study committee, or such committees may be created by a city council or by a vote of a town meeting. Such actions may set a timeline for such committees to report back to the appointing body, but there is no state requirement for a specific timeline. There is also no requirement for printing and distribution of any proposal. There are no public hearing requirements, per se, although some study committees do provide a public forum for discussion of its recommendations, and town meetings or city council meetings where such changes would be considered are public meetings. In recent years, however, some study committees have made use of the city/town website to publicize their recommendations.

After completing its work, the committee submits its recommendations to the local legislative body, which must decide whether to approve a "home rule petition." In cities, such approval must also have the concurrence of the mayor. If the petition is passed by the legislative body (and receives the mayor's approval, where necessary), it is then treated as a piece of proposed legislation - i.e., it is filed with the House or Senate clerk, assigned to a legislative committee, passed by the House and Senate, signed by the Governor, and returned to the city or town. In most instances where a significant change is proposed, the legislation will be subject to ratification by the municipality's voters prior to taking effect.

#### Periodic Review of the Charter by a Charter Review Committee

Once a community has a charter, there is often a provision for the periodic appointment of a charter review committee. The committee undertakes an examination to determine the charter's ongoing utility and accuracy. Such committees do NOT have the powers, duties, and responsibilities of an elected charter commission. Such committees are formed to review the charter and to make recommendations to its appointing body (e.g., board of selectmen, city council) regarding the need for additions, deletions, clarifications, or other amendments that would improve the charter.

The term for such an advisory committee is usually one year. Recommendations of the committee may take the form of a proposed special act or a proposed charter amendment, but the local legislative body must act upon the recommendations before they take effect. The committee may also find, for example, that the charter's intent is clear, but related bylaws or ordinances may need clarification. The role of such committees can be important in assuring that the charter is working as intended, but the charter review committee has no assigned role in achieving any change beyond its recommendation to its appointing body.

#### Recent Charter Reform Activity

Since the adoption of the Home Rule Amendment in 1966, over 180 charter commissions have been elected, and 88 "home rule charters" are now in effect; 68 in towns and 20 in cities. Currently, 63 municipalities; 21 in towns and 42 in cities operate under special act charters and 17 towns have adopted special acts establishing the position of town manager or town administrator only.

Three recent examples of the special act route are the Towns of Randolph and Bridgewater, and the City of Melrose.

Randolph operated with the representative town meeting/board of selectmen/executive secretary government. But in the fall of 2008, representative town meeting approved a "home rule petition" to place two charter proposals before the Town's voters in the spring of 2009 - a town council/manager charter and a representative town meeting/board of selectmen/town manager charter. The "home rule petition" was enacted by the state legislature as Chapter 2 of the Acts of 2009, and the Town's voters chose the town council/manager option in the spring of 2009. In the fall of 2009, voters elected the Town's first council.

Borrowing from the Randolph example, the Town of Bridgewater proceeded via "home rule petition," proposing that two charters be brought to the town's voters - a town council/manager charter and an open town meeting/board of selectmen/town manager charter. In the spring of 2010, the Town's voters chose the town council/manager option, and the town will be electing its first council later this year.

The City of Melrose, operating under a charter enacted in 1899 (and subject to numerous amendments and additions since then) also sought to make changes in 2004. The mayor appointed a citizen government study committee to make recommendations on how the charter needed to be changed. The initial recommendations of

this study committee evolved into a complete revision of the City's original charter. Among the major changes were: adding the mayor to the school committee's membership, providing a four-year term for the mayor, reducing the size of the school committee, and giving the mayor authority for department organization/reorganization via adoption of an administrative code. The city's voters approved this special act charter at the 2005 municipal election.

Two examples of communities that have recently elected charter commissions to propose charters are Southbridge and Winthrop.

In 2002, Southbridge's voters elected a home rule charter commission to revise the home rule charter that the town had adopted in 1973. The charter commission worked to clarify and update the 1973 charter, but it also proposed a major change in the composition of the town council. The 13-member council was composed of both district and at-large members; the 2002 charter commission proposed that the council be reduced to 9 members, all elected at large. The Town's voters approved this charter revision.

The Town of Winthrop's voters elected a charter commission in spring of 2003. At that time, the Town operated with a representative town meeting/board of selectmen/executive secretary. The charter commission proposed a council/manager charter that was approved by the voters in the spring of 2005.

Beyond these examples, several municipalities have elected more than one charter commission and adopted successive home rule charters - e.g., Billerica, Hudson, Methuen, Palmer, Provincetown, Seekonk, and Southbridge.

Amesbury and Easthampton adopted representative town meeting/board of selectmen/manager charters via home rule charter adoption in the 1980s and elected subsequent commissions in 1995, resulting in mayor/council charters that were adopted.

The towns of Abington and Plymouth replaced earlier home rule charters with subsequent adoption of special act charters.

Other towns have used subsequent special acts to revise or replace earlier special act charters. For example, Danvers replaced its special act charter adopted in 1949 by use of the special act process, approving a new special charter in 1997; the town of Amherst replaced its 1951 special act providing for a manager and its 1936 special act authorizing representative town meeting with a single comprehensive act defining the Town's governance structure in 2001.

In two instances, Braintree and Randolph, adopted a city form of government (mayor/council and council/manager, respectively) using the special act process.

#### Pros and Cons of the Two Routes to Reform

In the 44 years since the adoption of the Home Rule Amendment, more communities have preferred electing a home rule charter commission than the "home rule petition" as the route for considering change. While the preference tilts toward home rule charter adoption (88 home rule charters vs. 63 special act charters), the totals for each route demonstrate that communities use and find benefit in both.

The route to charter change is a choice of the city or town. In the case of the election of a charter commission, the Home Rule Amendment provides more specific direction and a timeline, reflecting the premise that the process should be deliberative, provide opportunities for participation and comment by the municipality's voters, and that the final decision be solely a choice of the voters. While the Attorney General reviews the preliminary report to determine its consistency with state law, the intent of the Home Rule Amendment is to assure that local decision-making is the foundation of the charter adoption process.

Many factors may influence the route chosen. A populace and leadership already "on the same page" regarding the change needed in the structure of the government may find the "home rule petition" route more efficient and timely; a city or town seeking to weigh the advantages of several options before determining a particular course may find the more deliberative approach of electing a charter commission to undertake this examination more appealing. Municipalities with the experience of having a successful charter commission in the past may have more inclination to use this route again, while towns that did not find the charter commission route responsive may want to use the "home rule petition"/special act route.

The general belief is that the "special act route" is faster, since the local legislative body approval and state legislature/governor approval can be achieved in one year, while a charter commission taking the maximum amount of time available (18 months) will not see its proposal on a ballot until 2 years following its election. However, study committees may take longer than one year. For example, the committee in Bridgewater worked for almost two years before presenting its proposals to the town meeting in the fall of 2009.

#### Commonalities in the Charter Reform Processes

Whether it is an elected charter commission, an appointed study committee, the chief executive, or the local legislative body, some entity must direct the charter preparation process. While an elected charter commission has certain powers and duties as defined in statute, such a commission has no special status regarding what can be included in a charter. Thus, almost all home rule and special act charters address the same subject matter, most often in very similar ways. The fulcrum questions of such undertakings often include:

- The legislative body: If it is a representative body, such as a representative town meeting or city/town council, the issues of size, composition, and term must be addressed.
- The chief executive: In a town, the size of the board of selectmen may be an issue; in cities, the issue of

combining the political and managerial responsibilities in an elected mayor vs. the preference for a professional focus on operations, fiscal conditions, and development by establishing a manager position will be crucial. Electing a mayor and the appointment of a chief operating officer could address both of these preferences.

- **Centralization vs. dispersion of authority:** Whether voters continue to elect certain offices, boards, and commissions is also a subject of deliberations. The overwhelming trend in charter adoption is to eliminate many elected offices and replace them with appointments by the chief executive. Most charters do provide transitional provisions allowing those in office at the time the charter is adopted to complete the term to which elected before the appointment provisions take effect. Some of the impetus for this type of change reflects the emphasis on professional training and experience, as well as certification, and ongoing continuing education requirements in many municipal positions.

#### To Avoid Reinventing the Wheel

As the Home Rule Amendment marks its 44<sup>th</sup> year in effect, the examples from which communities can learn are now numerous and cover the gamut from very small towns to some of the larger cities. [The Department of Housing and Community Development](#) also maintains a repository of all home rule charter proposals (adopted or not) and has a collection of many of the special act charters as well. There is also the guidance available from the responses the [Attorney General](#) provides to charter commissions regarding the proposal's consistency with state law.

Communities contemplating charter change ought to speak with officials in nearby communities who have undertaken charter change and/or now operate under a home rule or special act charter. Such practical advice from those who have undertaken the exercise is a valuable source of information for those looking to do the same.

The process of adopting or revising a charter is a challenging one for municipalities. This is partially deliberate, to ensure that it is difficult for mistakes to make it into a municipality's fundamental structure, but it is also partially a result of the accumulation of hundreds of years of evolving state and local laws and procedures in the Commonwealth.

Despite the challenges, every year a handful of municipalities undertake charter revisions or reforms and others undergo regularly-scheduled charter reviews. Understanding the legal options for charter change and the specific pros and cons of each option is critical for any public official or citizen contemplating an effort to change the charter of a Massachusetts municipality.

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**Editor's note: this article represents the opinions and conclusions of the author and not those of the Department of Revenue.**

[1] This Open Meeting Law is only effective through June 30, 2010. As of July 1, 2010, the new Open Meeting Law is [M.G.L. c. 30A, §§ 18-25](#).

### **How Does a Charter Study Committee Work?**

**Government Study Committee.** The most efficient and effective means of assessing the need for a city or town charter is to create a government study committee to explore the subject. If a charter is recommended, it would be drafted and presented as a special act, subject to the approval of the local legislative body, the community's voters and the State Legislature.

Alternatively, the election of a charter commission involves a less flexible, 18-month process that is governed by statute (M.G.L. Chapter 43B) and requires town meeting, town council or city council approval, plus a community-wide vote.

**Committee Creation.** A study committee can be formed by the board of selectmen on its own initiative or by town meeting through the approval of a warrant article, in which case the moderator would usually be the appointing authority. The content of the order or article would be substantially the same. There can also be a shared appointing authority. In other communities, the town council or city council would take action to form the committee. And, residents also have the ability, through a signature petition process, to bring the question of forming a committee to a vote.

**Committee Size.** There is no rule of thumb for a correct number of committee members. Keeping in mind that the process may involve drafting a report and a charter, an excessive number of members can be cumbersome and should be avoided. On the other hand, the committee membership should be sufficient to satisfy residents that a broad range of views is represented. Five-to-seven members are appropriate for most municipalities.

**Member Mindset.** It is important that committee members are objective and open to the idea of a charter. This is not to quell dissenting viewpoints, but if members are set against any charter proposal from the start, the process will be unproductive and divisive. At the same time, a credible, objective process is equally threatened if all members unquestioningly favor a charter. Remember that in an open and thorough process all voices will be heard, but they need not reside on the committee.

**Member Qualifications.** There are no special or required qualifications for committee members. It helps to have some on the committee who are familiar with the general operation and financial management of municipal government. Since there will inevitably be a discussion on the allocation of power and authority, it is not wise to allow past or present municipal employees or local officials to dominate the committee membership. An ability to get along and work with others and a willingness to devote time and energy to the effort outside of meetings is important. Members should be engaged and reliable.

**Committee Process.** A process for investigating the merits of a charter should not be set-out in advance in an order or town meeting warrant article. However, by the nature of the task, the committee should expect to interview municipal employees and local officials, consult office holders in other communities and review other charters. Meetings for public input should be planned early in the process and after a proposal is drafted in locations and at times that will maximize participation. The committee's work should end sufficiently in advance of formal approvals to allow the incorporation of comments and modifications, if any.

If, after its research, the committee recommends a charter, the same committee should be charged with drafting a charter as part of its report. Organizing a second committee to complete a draft would

**DEPARTMENT OF REVENUE**

**DIVISION OF LOCAL SERVICES**

**TECHNICAL ASSISTANCE SECTION**

be time consuming. More importantly, the successor committee would lack the knowledge and critical insights gained by its predecessor through the information gathering process.

**Charter Approval Process.** The adoption of a special act town charter requires approvals by the local legislative body, voters-at-large and the State Legislature. Although there is no legal requirement for a community-wide vote, the Legislature has historically required one in the case of charter proposals. That vote can occur before or after the special act is filed with the Legislature. The community's State Senator and State Representative would file the special act on the community's behalf, so discussions with them should take place on how best to proceed. Also, legal counsel should review the charter proposal before it is presented for local approval and once passed, it must be submitted to the State Attorney General for review.

**Sample Motion**

Moved, that the *(town, board of selectmen, town council or city council)* form a Charter Study Committee to be comprised of *(number)* members appointed by *(the moderator, board of selectmen, town council or city council)*. Each committee member shall be a registered voter and, to the extent possible, possess expertise or knowledge relevant to the work of the study committee. The study committee is charged with exploring, by whatever means it deems appropriate, the merits or lack of merits associated with adopting and operating under a municipal charter. The committee shall present a written report of its findings and recommendations to *(the appointing authority)* no later than *(month, day, year)*. If the study committee recommends the adoption of a municipal charter, it shall present a draft charter proposal as part of its report.

## City and Town Charters - Adoption, Revisions and Amendments

Under the Home Rule Amendment to the Massachusetts Constitution (Amendment Article 89) and the Home Rule Procedures Act (MGL Ch. 43B), cities and towns can form a charter commission to adopt a new charter; entirely revise an existing charter, or amend selected charter provisions. As an option to the Home Rule Charter process under Ch. 43B, communities can also adopt, revise or amend a charter by a special act of the State Legislature with approval by the Governor (See Special Acts). In each instance, "Charter" refers to a written instrument that defines the government structure under which a city and town operates, that may create local offices; distribute powers, duties and responsibilities among local offices; and that may establish and define certain procedures to be followed by a city or town government. (MGL Ch. 4, Sec 7, Clause 5).

For municipalities, a key distinction between a charter commission and a special act is the time required to complete the process. The work of a charter commission is directed by statute and will involve 18-24 months. Whether initiated locally, or as a recommendation of the governor, a special act involving city and town charters can generally advance more quickly.

*Charter Commission* - Under Section 3 of Ch. 43B, the process to form a charter commission is initiated when 15 percent of the voters petition the city council or board of selectmen to order a local ballot question on whether to adopt a new charter, or to revise or amend an existing charter. Once the petition and signatures are certified as valid, the city council or selectmen have 30 days to adopt the order and place the question on the ballot of the next regular election which may not be within the ensuing 60 days.

When votes are cast on the question of forming a charter commission, votes are simultaneously cast to elect the nine commission members who qualify for nomination through the collection of voter signatures. If a majority of the voters approve the question, the top nine vote getters sit on the commission which is directed by statute to hold its first public hearing within 45 days of the election. It must complete a preliminary report within 16 months, then publish and submit its preliminary report to the attorney general for an advisory opinion, and complete its final report within two additional months (or 18 months from the election). Charter commission recommendations are then placed before the voters for acceptance or rejection. If the commission has no recommendation, then no vote occurs.

Under Section 10, an alternative process which does not involve a charter commission is available to amend a previously adopted or revised charter. It begins with a two-thirds vote of a city council (with concurrence of the mayor), or by two-thirds vote of town meeting. A public hearing must be held within three months and final action must occur within six months of the date of proposal. Each proposal must be submitted to the Attorney General for approval and then to the voters.

*Special Act* - As an alternative, a community can adopt, revise or amend a charter by a special act of the State Legislature. Special acts, or special laws, involving government structure are applicable only to one city or town and, with few exceptions, are deemed to have the force of a charter. In cities, the city council must approve submission of a special act, and in towns, approval of town meeting is required. Under rarely used provisions of law, changes to local charters can be imposed on recommendation of the Governor and two-thirds vote of each branch of the Legislature.

Local actions to adopt, revise or amend a charter through a special law need not be approved by the voters at-large before, or after, Legislative enactment in order to take effect. However, as a matter of practice, the Legislature, or the city council or town meeting locally, almost always make special laws to adopt or change a charter contingent on voter approval.

State law does not mandate or prescribe any procedure for arriving at proposed charter provisions when a special act is to be drafted. However, a local government study committee, typically appointed by the selectmen, or when town meeting directs, by the moderator, is a frequently used method. The appointing authority is not restricted in the number of committee members. It can define the charge of the committee broadly to encompass all aspects of local government, to narrow the scope of investigation, or to ensure that particular matters are included within the committee's focus. In its charge,

the committee can also be directed to complete its work in a shorter time frame than what the law requires for a charter commission.

Once a charter proposal is drafted as a special act, it must be presented to the city council and mayor, or to town meeting for approval and authorization to be submitted to the General Court.



## **Charter Components**

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### **ARTICLE 1 - INCORPORATION, SHORT TITLE, POWERS**

Incorporation  
Short Title  
Division of Powers  
Powers of the Town  
Construction  
Intergovernmental Relations  
Definitions

### **ARTICLE 2 - LEGISLATIVE BRANCH**

Town Meeting  
Presiding Officer  
Committees  
Time of Meeting  
Special Meetings  
Warrants  
Initiation of Warrant Articles  
Availability of Town Officials at Town Meetings  
Clerk of the Meeting  
Rules of Procedure  
Report to Voters

### **ARTICLE 3 - EXECUTIVE BRANCH**

In General  
Board of Selectmen  
School Committee  
Town Clerk  
Board of Library Trustees  
Town Moderator  
Planning Board  
Housing Authority

**ARTICLE 4 - TOWN MANAGER**

Appointment, Qualifications, Term  
Powers and Duties  
Delegation of Authority  
Acting Town Manager  
Removal and Suspension

**ARTICLE 5 - ADMINISTRATIVE ORGANIZATION**

Organization of Town Agencies  
Merit Principle  
Authority of Departments Heads, etc. to Appoint

**ARTICLE 6 - FINANCE AND FISCAL PROCEDURES**

Fiscal Year  
School Committee  
Submission of Budget and Budget Message  
Budget Message  
The Budget  
Action on the Budget  
Personal Liability for Expenditures in Excess of Appropriations  
Capital Improvement Program  
Independent Audit

**ARTICLE 7 - GENERAL PROVISIONS**

Elections  
Charter Changes  
Severability  
Rules of Construction  
Rules and Regulations  
Certificate of Election or Appointment  
Periodic Review, Charter and By-Laws  
Procedures Governing Multiple Member Bodies  
Removals and Suspensions  
Notice of Vacancies

**ARTICLE 8 - TRANSITIONAL PROVISIONS**

Continuation of Existing Laws  
Continuation of Government and Administration  
Transfer of Records and Property  
Effect on Obligations, Taxes, Etc.  
Time of Taking Effect

## Making the Case for Your Home Rule Petition

John G. Gannon, Esquire, reprinted from *The Local View*, A Publication of the Joint Committee on Municipalities and Regional Governments, Massachusetts State Legislature, December, 2006

A home rule petition is a request by an individual city, town, region, or district for approval from the legislature to enact policy for that locality that is not explicitly authorized in the general laws. The home rule petition can be an effective tool for cities and towns. It provides a mechanism for municipalities to find innovative solutions and to apply policy change for their own unique circumstances.

After a home rule petition is approved locally, it is then filed as local legislation by one or more of the city or town's legislative delegation at the request of the municipality. Then the bill is referred to a committee for consideration and action. Many home rule petitions go to the Joint Committee on Municipalities and Regional Government. However, sometimes the subject matter fits more appropriately into another committee's purview and may be referred accordingly.

The committee's job is to gain an understanding of the distinctive set of circumstances that call for the local legislation. In short, the committee and its leadership will need to know *why*. It is in this respect that committee members and staff are dependent upon local leaders, such as town counsels, city councilors, and other city and town administrators, as well as impacted residents and other interested parties.

The checklist below may help local officials make the case for their home rule petitions.

- \_\_\_\_\_ File a certified copy of the local vote with the local petition.
- \_\_\_\_\_ Take the time to brief your local legislative delegation – state representatives and state senators are often the first line of communication for research staff and they can be effective liaisons from the state level to the cities and towns they serve.
- \_\_\_\_\_ A public hearing is scheduled for each bill being considered by every legislative committee. Stay in touch with your local representatives and senators because they will be notified when the hearing is scheduled.
- \_\_\_\_\_ Use the public hearing as an opportunity to offer in-person testimony or to submit written testimony in regard to your home rule petition. Explain the need and the solution.
- \_\_\_\_\_ Be available for committee staff or members to contact you with follow-up questions or requests for more documentation after a public hearing.
- \_\_\_\_\_ Be willing to share back-up documentation, such as charters, ordinances and bylaws, debt ratio figures and bond ratings, terms of lease, sale or land swap agreements, site maps, study results, zoning decisions, etc.
- \_\_\_\_\_ Most importantly, demonstrate the need for the local policy change, show that community members care about this change, and accentuate long-term considerations and positive impact.

**MASSACHUSETTS GENERAL COURT**  
**LEGISLATIVE RESEARCH AND DRAFTING MANUAL**

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February 2010

Dear Legislative Drafter:

The House and Senate Counsel have prepared this manual to help legislative lawyers and other staff who are drafting or reviewing bills for the Massachusetts General Court. We hope you will find it useful.

Its purpose is to promote uniformity in drafting style, and to make the resulting statutes clear, simple and easy to understand and use. This manual is not a substitute for advice and drafting assistance from the House and Senate Counsel. Rather, we hope it will encourage you to call or visit our offices for further help.

We welcome any corrections, suggestions for improvement and other comments.

Sincerely,

Alice E. Moore  
Counsel to the Senate

David Namet  
Acting Counsel to the House

Table of Contents

Prologue.....6  
Part 1- Legislative Research, Summary and Analysis.....6  
A. Legislative Research.....6

## **Part 6- Bill Information- Home Rule Petitions**

### **A. Effective Date**

The effective date of a bill depends upon whether it is subject to the Referendum under Article 48 of the Constitution (local bills that are restricted in their operation to a particular town, city or other political division or to particular districts or localities of the commonwealth) and is normally effective 30 days after it becomes law. In order to make a local bill effective immediately a drafter should put, as the last section of the bill, the following language.

“SECTION X. This act shall take effect upon its passage.”

The effect of this section would be to make the bill effective the same day it becomes law.

### **B. Home Rule Petitions**

#### **1. Local Approval Requirements.**

Section 8 of the Home Rule Amendment (Mass. Const. amend. art. 2, as appearing in amend. art. 89) requires special procedures, either prior local government approval or a two-thirds vote by each house following the Governor's recommendation -- when the Legislature acts "in relation to" a single city or town.

The Supreme Judicial Court has held that this restriction on legislative power "is to be narrowly construed" and in two cases emphasized that it does not prevent legislation on state, regional or general matters. *Clean Harbors of Braintree, Inc. v. Board of Health*, 415 Mass. 876, 881 (1993); *Gordon v. Sheriff of Suffolk County*, 411 Mass. 238, 244 (1991).

In *Gordon*, the court upheld provisions of the FY 1992 main budget transferring the new Suffolk County House of Correction from the Boston penal institutions department to the Suffolk County sheriff. Recognizing that "[o]peration of county correctional facilities has always been a matter of State and general concern," 411 Mass. at 246, the court concluded that the legislation's "special effect on Boston's penal institution's department . . . neither diminishes its broader purpose nor serves to make the Home Rule Amendment applicable." *Id.* at 245.

In the *Clean Harbors* case, the court upheld a law exempting pre-existing facilities from a statute requiring local boards of health to approve sites for certain hazardous waste facilities. Even though site proceedings were pending before the Braintree Board of Health and the court assumed that the new exemption applied in fact only to this single facility, there was no violation of section 8 because "the waste treatment performed at [this] facility is certainly a matter of State, regional and general concern." 415 Mass. at 882.

On the other hand, the court invalidated an appropriation item that sought to condition distribution of funds to Boston, but no other municipality, on the city's maintaining a certain

level of police and fire services. *Mayor of Boston v. Treasurer and Receiver General*, 384 Mass. 718 (1981).

## **2. How Often Must Local Approval Be Obtained?**

The general policy of the Senate is that whenever a new petition for local legislation is filed in a new 2-year session of the General Court, it must be based upon a new local approval – not the old local approval used to file a bill in a previous session of the General Court; however the Senate allows a petition that is accompanied by a local approval dated within 1 year of the start of a new General Court as long as that local approval was not part of a bill that reached the floor (i.e. 2<sup>nd</sup> reading or further) in either branch during the previous session of the General Court.

A petition accompanied by a local approval voted on during a 2 year session is valid throughout the entire session.

## **3. Proper Local Approval.**

Section 8(1) of the Home Rule Amendment provides that the Legislature may enact special laws relating only to a single city or town "on petition filed or approved by the voters of a city or town, or the mayor and city council, or other legislative body, of a city, or the town meeting of a town."

Direct voter approval is allowed if the city or town charter provides for the local initiative (or for a referendum to review approval by the local legislative body). *E.g.*, G.L. c. 43, §§ 37-44 (procedures in "plan" cities). *Opinion of the Justices*, 370 Mass. 879 (1976); *Marino v. Town Council*, 7 Mass. App. Ct. 461 (1979).

Otherwise, the local approval must be by vote of the city or town council (with the mayor's approval if the charter requires it for other municipal legislation) or town meeting. In two advisory opinions to the Legislature, the Justices of the Supreme Judicial Court have interpreted section 8(1) to require approval by "the responsible legislative body of the municipality." *Opinion of the Justices*, 375 Mass. 843, 845 (1978); *Opinion of the Justices*, 365 Mass. 655, 658 (1974). In both cases, the Justices consulted the municipality's charter to ascertain the procedures required for other local legislation, and advised that section 8 required those same procedures to be followed for approving home rule petitions: "§8 evinces no intention to prescribe different legislative procedures for a [home rule petition] from the procedures otherwise followed by the [municipal] legislative body." 365 Mass. at 659-60 (bill allowing town manager or administrator in "town council" municipalities to veto home rule petitions violated §8, because this official "has no such power in any other legislative context" under the charter). *See* 375 Mass. at 845-46 (Cambridge's "Plan E" Mayor had no power to veto home rule petition, because Plan E charter gives him "no legislative powers apart from those powers he possesses as a member of the city council," including no veto power). *But see Opinion of the Justices*, 429 Mass. 1201 (1999) (city council cannot override mayor's veto of home rule petition).

Before it can pass a special law based on a home rule petition, the Legislature must have evidence of approval by the municipal legislative body. This should take the form of a copy of the body's vote (or a certificate of the voters' vote on an initiative measure), including the date, attested by the original signature of the city or town clerk. The vote must request some action by the Legislature or "General Court."

#### 4. Amending Home Rule Petitions.

Courts applying section 8(1) of the Home Rule Amendment have held that the municipal vote approving a home rule petition may be general or specific. *Newell v. Rent Board of Peabody*, 378 Mass. 443, 446-48 (1979); *Opinion of the Justices*, 356 Mass. 775, 791 (1969); *Nugent v. Town of Wellesley*, 9 Mass. App. Ct. 202 (1980). If the local approval is general (as it was in all three of these cases) -- or if the municipal vote does not restrict amendments -- the Legislature has considerable freedom to amend "within the scope of the general public objectives of the petition." *Opinion of the Justices*, 356 Mass. 775, 791 (1969). If the municipality wishes to restrict or preclude legislative amendments to its proposal, the municipal vote must say so in unambiguous terms.

A municipality has essentially three options when it approves a home rule petition:

(a) General vote. The municipal legislative body may approve a vote requesting legislation to accomplish a general purpose. Draft legislation may be attached, but the mere approval of proposed legislation by the municipal legislative body does not restrict legislative amendments. (See Special Commission on Implementation of the Home Rule Amendment, Second Report, Senate No. 10, at 11 [1967].) For example, if the vote sets forth the text of the proposed legislation and requests that the Legislature "enact the following," this is a general vote because it does not specifically preclude legislative amendments. If a draft bill is not approved, the legislation may be drafted by the municipal executive (the mayor, manager or selectmen), the state legislator who files it, or their respective counsel. One town uses the following form for such a general vote:

*Voted, to authorize the Selectmen to petition the Legislature to enact legislation to [insert purpose]; provided, that the Legislature may reasonably vary the form and substance of the requested legislation within the scope of the general public objectives of this petition.*

(b) Vote restricting amendments. The municipal vote may preclude substantive legislative amendments by clearly saying so. The City of Boston and some other municipalities routinely use this form:

*Ordered: That a petition to the General Court, accompanied by a bill for a special law relating to the [city or town of ] to be filed with an attested copy of this order be, and hereby is, approved under Clause (1) of Section 8 of Article 2, as amended, of the Amendments to the Constitution of the Commonwealth of Massachusetts, to the end that legislation be adopted precisely as follows, except for clerical or editorial changes of form only:- [insert text of bill].*

The risk of using such language, especially for a town meeting that meets infrequently, is that an amendment necessary to secure passage of the bill may not be approved for many months.

Municipalities should not use the phrase “in substantially the following form” or “substantially as follows,” since the meaning of “substantially” is ambiguous. This phrase may mean that no amendments of “substance” are allowed, or that no “important” amendments are allowed. If the municipality desires the first meaning, it should use the Boston language.

(c) Vote allowing the municipal executive to approve amendments. A third option is to use the restrictive language of option (b), but also to include language allowing the municipal executive (especially the selectmen in towns) to approve amendments within the scope of the general public objectives of the petition. Municipalities should use the following form:

*Voted, to petition the General Court to the end that legislation be adopted precisely as follows. The General Court may make clerical or editorial changes of form only to the bill, unless the Selectmen [or other municipal executive] approve amendments to the bill before enactment by the General Court. The Selectmen [or other municipal executive] are hereby authorized to approve amendments which shall be within the scope of the general public objectives of this petition. [insert text of bill]*

### C. Special Enactment Requirements

Article 89 of the **ARTICLE LXXXIX OF THE AMENDMENTS TO THE**  
Amendments to **CONSTITUTION REQUIRES**  
the Constitution,

The Home Rule  
Amendment,  
requires a two-  
thirds vote of  
the House and  
Senate to enact  
a bill

### **TWO-THIRDS VOTE ON ENACTMENT**

*Senate/House.....Committee on BTR*

*Correctly Drawn*

recommended  
by the Governor  
that relates to a  
single city or  
town but has not  
received local  
approval  
(section B of  
Part 6).

*For the Senate Committee*

Article 115 of the Amendments to the Constitution requires a two-thirds vote of the House and Senate to enact a bill that imposes additional cost on cities or towns by regulating municipal employment (if each city or town does not have to accept it and the Legislature does not assume, or appropriate, the cost).

**ARTICLE CXV APPLICABLE**

**Two-thirds Vote Required**

Senate/House.....Committee on BTR

Correctly Drawn.

Provides for additional cost on two or more municipalities for the compensation, hours, status, conditions or benefits of municipal employment and comes within the provisions of Article CXV of the Amendments to the Constitution.

---

For the Senate/House Committee

**D. Local Mandates**

**1. The “local mandates” Statute.**

The voters originally enacted the local mandates statute, G.L. c. 29, § 27C, as part of the 1980 initiative law called “Proposition 2½.” It says that laws (including state agency regulations) “imposing any direct service or cost obligation upon any city or town” are not effective unless either the municipal legislative body votes to accept the law, or the Legislature appropriates the cost every year.

The local mandates law does not apply to:

- pre-1981 laws.
- “incidental local administration expenses.” These are “relatively minor expenses related to the management of municipal services . . . that . . . are subordinate consequences of a municipality’s fulfillment of primary obligations.” *City of Worcester v. The Governor*, 416 Mass. 751, 758 (1994).
- laws that the Legislature specifically exempts (e.g., the Education Reform Act of 1993, see G.L. c. 70, § 15; St. 1993, c. 71, § 67).

# Local Charter Procedures



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## Table of Contents

### Part One

#### Introduction

What is a Local Charter ? .....	5
Home Rule Charter .....	5
Special Act Charters .....	5
“Plan” City Charter .....	6
Standard Representative Town Meeting .....	6
Non-Charter Forms of Local Government	
General Laws .....	6
Optional Plans .....	6
How Can A Local Charter Be Changed ? .....	7

### Part Two

#### The Home Rule Charter Method

Content Limitations .....	7
Adoption or Revision Procedure .....	9
Amendment Procedure .....	14
Special Steps for Suggested Amendments .....	15

### Part Three

#### The Special Act Charter Method

Local Approval .....	15
Legislative Action .....	16
Final Acceptance by Local Voters .....	16

### Part Four

#### Synopsis of Local Charter Methods

### Part Five

#### Procedure for Challenging Adoption or Revision Petitions as Defective

## Part One Introduction

### Local Charter Procedures for Organizing Local Government in Massachusetts Cities and Towns

This booklet may be of help to citizens who want to change the form, structure and organization of their local government. It is not a detailed legal treatise, although it may be useful to lawyers. Legal citations have been included after each section for easy reference.

The booklet explains the procedures which may be used to adopt or change local charters. For information and advice about the content of a charter, contact the Office of Planning & Management, Executive Office of Communities and Development, 100 Cambridge Street, Boston 02202, phone (617) 727-3253.

The Elections Division of the Office of the Secretary of the Commonwealth offers information and informal assistance to any citizen about the procedures in this booklet, at One Ashburton Place, Boston 02108, phone (617) 727-2828 or 800-462-8683.

### What is a Local Charter ?

In this booklet, the term "charter" refers to the basic provisions which set up the form, structure, and organization, including the powers and duties of the important officials, of a city or town government in Massachusetts. The charter is the "constitution" of the city or town.

Any ordinances or bylaws which are passed by the local legislative body must be consistent with the charter.

- **Ordinances or bylaws cannot be used to change the composition, mode of election or appointment, or terms of office of the local legislative body, the mayor, the selectmen, or the city or town manager. These changes can only be accomplished by modifying the charter using certain procedures discussed in this booklet.**

Legal references:

- *Mass. Const. amend. art. 2, as appearing in amend. art. 89 (the Home Rule Amendment, which will be referred to as "HRA"), § 6;*
- *M. G.L. ch. 4, § 7(5); ch. 43B, § 13.*

### What Kinds of Charters Are There ?

There are four different kinds of charters. They differ mostly in the way they are or have been obtained by the cities and towns.

#### **1. Home Rule Procedures**

Since the Home Rule Amendment to the state constitution was adopted in 1966, cities and towns have been able to adopt home rule charters through the method outlined in Part Two of this booklet.

#### **2. Special Act Charters**

Traditionally, the state Legislature has passed special laws for a city or town which wants to obtain a charter. This method is still available, and is described

in Part Three of this booklet. (Note, however, that if special laws governing a city or town were passed after 1966 they are not always considered “charters”.)

### 3. “Plan” City Charters

Before 1966, some cities accepted one of the “plan” city charters which the state Legislature made available (Plans A, B, C, D, E, or F). These plan charters may now be adopted or changed only by the methods in Parts Two and Three of this booklet.

### 4. Standard Representative Town Meeting

Similarly, between 1931 and 1966, the state Legislature made available for local acceptance the standard form of representative town meeting government. Like plan charters, this can now be adopted or changed only by using the methods in Parts Two and Three of this booklet.

Cities and towns may change their charters by using the methods in Part Two or Part Three of this booklet, regardless of which method was originally used in adopting their charter.

#### *Legal references:*

- *Home rule charters:* HRA §§ 2, 3, 4; G.L. ch. 43B.
- *Special act charters:* HRA § 9; G.L. ch. 4, § 7 (5); ch. 43B, § 19.  
*See Opinion of the Justices*, 356 Mass. 761, 250 N.E. 2d 428 (1969).
- “Plan” city charters: G.L. ch. 43; ch. 43B, § 18.
- *Standard form of representative town meeting government:*  
M. G.L. ch. 43A; ch. 43B, § 18.

### **Non-Charter Forms of Local Government**

The following two forms of local government function like charters in some ways, but they are not considered “charters” in this booklet:

#### **General Laws**

Some towns which have no “charter” as the term is used here, are allowed to govern simply by using the Massachusetts General Laws which pertain to local government, together with various acceptance statutes and the town bylaws. However, every city must have a charter.

#### **Optional Plans**

The state Legislature can establish optional plans of local organization and government for adoption by the voters of a city or town. Boston voters have accepted one such plan—for district representation on their city council and school committee.

#### *Legal References:*

- *General laws on local government:* G.L. ch. 39, 41, etc.
- *Optional plans:* HRA § 8; G.L. ch. 43, §§ 128-134, G. L. ch. 43C §§ 1-15.
- *Definition of “charter”:* G.L. ch. 43B, §§ 18, 19; Special Commission on Implementation of the Municipal Home Rule Amendment, Eighth Report, S. Doc. 1547, at 13-15 (1967). See Board of Selectmen v. Town Clerk, 370 Mass. 114, 345 N.E. 2d 699 (1976).

## **How Can A Local Charter be Changed ?**

In general, the four kinds of charters can now be adopted or changed only by the two methods described in this booklet: Each method has advantages and disadvantages.

### **The Home Rule Charter Method**

The home rule charter method permits greater local autonomy, but it can take more time.

There are some limitations on the contents of a home rule charter, which do not apply to the special act charter.

### **The Special Act Charter Method**

The special act charter method can be faster, but it requires approval by the state Legislature.

Using either method, towns must have a population of at least 12,000 in order to adopt a "city" form of government; and must have at least 6,000 to adopt a "representative" town meeting. Consult the full descriptions of these methods in Parts Two and Three.

#### **Legal References:**

- *Two methods:* Board of Selectmen v. Town Clerk, 370 Mass 114, 345 N.E. 2d 699 (1976); Marino v. Town Council, 7 Mass. App. Ct. 461, 388 N.E. 2d 334 (1979).
- *City and town limitations:* HRA, § 2, 8. See Chadwick v. Scarth, 6 Mass. App. Ct. 725, 383 N.E. 2d 847 (1978).

#### **Part Two**

### **The Home Rule Charter Method**

A city or town may adopt or change a charter without action by the state Legislature by using one of the two, home-rule charter procedures:

- adoption or revision, or
- amendment.

However, with either of these procedures there are content limitations which are not encountered using the Special Act method described in Part Two.

#### **Content Limitations**

Provisions adopted or changed must be consistent with laws passed by the state Legislature. However, most provisions concerning local government structure, officers, terms, and method of selection are automatically consistent with state law.

Unless the state Legislature expressly approves, no charter provision adopted or changed using the home rule charter method may:

- regulate elections (other than those involving these home rule charter procedures, themselves)
- levy, assess, or collect taxes

- borrow money or pledge the credit of the city or town
- dispose of park land
- govern civil relationships (such as those between landlords and tenants) except incidentally to an independent local power
- define and punish a felony, or impose imprisonment as a punishment

Within these limitations the adoption or revision procedure may be used either to adopt a new charter or to change a current charter or “special act” (unless the special act specifically provides otherwise), while the amendment procedure may be used to change a current charter or “special act” (unless the special act specifically provides otherwise).

Further, the amendment procedure may not be used to change the composition, mode of election or appointment, or terms of office of the local legislative body, the mayor, the selectmen or the city or town manager. A provision prohibiting dual office holding does not constitute a change in the mode of election of a town officer.

**A charter adopted by home rule may provide:**

- that any particular local office be elected or appointed (except a board of selectmen, school committee, moderator, or members of legislative body who must be elected);
- for the term of office to be served by any local elected officer, provided that no term shall be more than five years;
- for the merger of two or more local offices; or
- for the powers and duties of one office to be divided and exercised by two or more offices.

If a town wishes to elect a new board or officer, increase/decrease the number of members of a board, or fix the term of office of town officers, it can do so in accordance with chapter 41, §2, without using these procedures to amend its charter.

*Legal References:*

- Home rule charter method generally: HRA § 2; G.L.ch. 43B, §2.
- Consistent with state law: HRA § 2; G.L. ch. 41, § 1; ch. 43B, § 20.  
*See Anderson v. City of Boston*, 376 Mass. 178, 380 N.E. 2d 628 (1978), *appeal dismissed*, 439 U.S. 1060 (1979); *DelDuca v. Town Administrator*, 368 Mass. 1, 329 N.E. 2d 748(1975);  
*Bloom v. City of Worcester*, 363 Mass. 136,293 N.E. 2d 268 (1973).  
*See also Brown, Home Rule in Massachusetts: Municipal Freedom and Legislative Control*, 58 Mass. L.Q. 29 (1973).
- Express state approval required: HRA § 7.
- “Adoption or revision” procedure: HRA § 3.
- “Amendment” procedure: HRA § 4. Charter consistent with other laws: G.L. ch. 43 B, § 20
- Amending charter by general law: *Hayden v. Town of West Springfield*, 22 Mass. App. Ct. 902 (1986) *Harrington v Board of Selectmen*, 379 Mass. 652 342 N.E. 2nd 703 (1976) *Medeiros v. Board of Election Commissioners*, 376 Mass. 286, 291, 325 N.E. 2d 579 (1975)

**Adoption or Revision Procedure**

This is a rather complex, lengthy procedure. It can take two years to implement in a city and at least a year in most towns. It requires

- petitioning for a question to local voters,

- election of a charter commission to propose a charter or revision, and then
- approval of the proposal by local voters.

The steps outlined on the following pages are summarized in a chart on page 10 in the section titled “Adoption or Revision Procedure”.

### Step One

Petition to place the question on the ballot by collecting signatures, having the registrars certify them and file their report with the correct official.

To ensure that the question will appear on the ballot in a particular local election, it is advisable to file an adoption or revision petition with the local registrars of voters at least 100 days before that election. (Because of the flexibility in the amount of time needed for various official actions on the petition, the question might appear on the ballot if the petition is filed as late as 68 days before the election.) The petition must contain the signatures of 15% of the number of registered voters in that city or town at the time of the last state election.

Blank petition forms should be obtained in ample time from the city or town clerk or election commission to allow for adequate circulation before the filing deadline. Explicit signing instructions accompany the blank forms. Blank petitions may be photocopied if additional petitions are needed.

After collecting their signatures, the petitioners file the completed petition with the registrars. All the sheets of the petition need not be filed at the same time, but the petitioners must notify the registrars in writing when their filing is complete. The registrars, within ten days after the completed petition is filed, must certify the signatures and report the results to the city council or the board of selectmen by filing their report with the city or town clerk. Within two working days after the registrars make this report, any local registered voter may challenge the petition by filing a written objection. This objection procedure is fully described in Appendix I.

Within thirty days after the registrars have filed their certification report, showing that the petition is in proper form, the city council or board of selectmen must order the question to be submitted to the voters. This order is not subject to a referendum and, in a city, does not require the mayor’s approval. The question will then appear on the ballot at the next regular (not special) local election which occurs at least 60 days after the order of the local body. Should the council or selectmen fail to act, then the question will automatically appear at the next regular election which occurs at least 90 days after the report was filed.

The question to be asked for a community which has never adopted a home rule charter is:

“ Shall a commission be elected to frame a charter for  
 \_\_\_\_\_ ? ”  
 (Name of community)

For the community which already has a home rule charter, the question is:

“ Shall a commission be elected to revise the charter of  
 \_\_\_\_\_ ? ”  
 (Name of community)

If the question passes, the city or town clerk notifies the state Department of Community Affairs. That department will then inform the newly elected charter

commission of the dates for submitting its reports and for placing its final report on the ballot (see steps two and three).

The candidates for charter commissioner, who will take office if the question passes, appear on the same ballot (see step two below).

*Legal References:*

- *Form of petition and signatures:* G.L. ch. 43B, § 15.
- *Filing procedure:* HRA § 3; G.L. ch. 43B, § 3.
- *Objections:* HRA § 3; G.L. ch. 43B, § 3; ch. 53, § 11; ch. 55B, § 7.
- *Ballot question:* HRA § 3; G.L. ch. 43B, §§ 4, 6.

### AGENDA OF EVENTS

#### ADOPTION OR REVISION PROCEDURE BEFORE THE ELECTION OF A CHARTER COMMISSION

TIME	EVENT	EXTRA PROCEDURE
ample time	obtain & circulate charter petitions	
	obtain & circulate nomination papers	
100 days before election	file charter petitions with registrars for certification	Notify registrars in writing when filing is complete
by ten days after petition is filed	registrars file certifi- cation report with officials	
within 2 working days after certi- fication report dead- line	local registered voter may file written objection	
within 30 days after certification report filed	officials order question submitted to voters*	
42 days before election by 5:00 p.m.	submit commission nomination papers for certification	
next regular elec- tion occurring at least 60 days after order by local officials	charter question and charter commission candidates submitted to voters	

\* If community officials fail to order question submitted to the voters then the question and commission candidates will automatically appear on the ballot at the next regular election which occurs at least 90 days after the charter certification report was filed.

**Step Two**

Nominate, elect and organize a commission to prepare the text of the charter or revision for submission to the local council or selectmen.

At the same local election in which they vote on the ballot question, the voters also elect nine candidates to the charter commission which will prepare the charter or revision if it is mandated.

Since these candidates must go through the normal process of filing nomination papers by deadlines which precede the election, they should begin circulating their papers almost as soon as the charter petitions are being circulated.

For a charter commission candidate's name to appear on the ballot, the nomination papers must be submitted to the registrars for certification by 5:00 p.m., 42 days before the election. Most of the other procedures and requirements for filing nomination papers are the same as those for any local office. Further instructions and deadlines are printed on the official nomination paper forms which are available only from the clerk or election commission.

The number of registered voter signatures required on a charter commission nomination paper is directly related to the total population of a community:

<b><u>POPULATION</u></b>	<b><u>REQUIRED SIGNATURES</u></b>
less than 6,000	10
6,000—11,999	25
12,000—49,999	50
50,000—99,999	100
100,000 or more	200

On election day, each voter may vote for nine candidates. Even a voter who votes against establishing the charter commission may vote for candidates. The nine who receive the highest numbers of votes become charter commissioners if the ballot question wins.

The commission's funding, administrative support, duties and even its calendar of action are detailed in the General Laws. Commissioners serve without pay, but are reimbursed for expenses. Once elected, they must promptly elect a chairman, vice-chairman and clerk and notify the city or town clerk. Whenever a vacancy occurs, by death, resignation, a member's ceasing to be a registered voter, or if there is a failure to elect, or any other vacancy, the commission must fill it by majority vote.

The commission must hold a series of public hearings and prepare both preliminary and final reports on the proposed charter or revision, all within specified times (see Calendar of Action below); both reports must include the text of any proposed charter or charter revision and any explanatory information. Both reports must be furnished to the Department of Community Affairs and the Attorney General. The Attorney General must furnish the commission a written opinion setting forth any conflict between the proposed charter and the constitution and laws of the Commonwealth. In addition, the opinion is also sent to the Department of Community Affairs. The final report includes any comments, a comparison between the proposal and the current charter, and any

minority report which has been furnished to the commission chairman within two days after the final report has been approved.

*Legal References:*

- *Nomination and election:* HRA § 3; G.L. ch. 43B, § 6; ch. 53, § 7.
- *Organization, vacancies, pay:* G.L. ch. 43B, § 7.
- *Funding and administration:* G.L. ch. 43B, § 8.
- *Hearings and reports:* HRA § 3; G.L. ch. 43B, §§ 9, 10.

### Charter Commission Calendar of Action

#### Time Elapsed

#### Required Action

- |  |   |
|--|---|
| 1. within 45 days after election   | <ul style="list-style-type: none"> <li>• hold a public hearing</li> </ul>   |
| 2. within sixteen months after election<br>(may be accomplished within eight months in most towns) | <ul style="list-style-type: none"> <li>• publish a preliminary report in a local newspaper</li> <li>• make the report available to any registered voter who requests it</li> <li>• Send two copies each to the state Attorney General and state Executive Office of Communities and Development.</li> </ul> |
| 3. within four weeks after publication of preliminary report                                       | <ul style="list-style-type: none"> <li>• The Attorney General shall furnish the commission with a written opinion which sets forth any constitutional conflict</li> <li>• hold a second public hearing</li> </ul>   |
| 4. within four weeks after having received the preliminary report                                  | <ul style="list-style-type: none"> <li>• Attorney General provides legal opinion of the proposal</li> </ul>   |
| 5. within eighteen months after the election (may be accomplished within ten months in most towns) | <ul style="list-style-type: none"> <li>• submit final report to city council or board of selectmen</li> <li>• send copies to state Attorney General and Executive Office of Communities and Development</li> </ul>  |

**Step Three:**

**Submit commission's plan to local voters for approval; supply required copies for records and for the public.**

If the final report of the charter commission recommends a new charter or charter revision, it must then be approved by the local voters. This would occur at the first regular (not special) local election two months or more after the report is submitted. This election is usually one year (in most towns) or two years (in cities) after the one in which the commission was elected.

The question to be asked is:

“ Shall this (city or town) approve the (new charter or charter revision) recommended by the charter commission summarized below? ”

A brief summary of the significant provisions, prepared by the charter commission, follows on the ballot.

By at least two weeks before the election, the city council or board of selectmen must distribute a copy of the charter commission's final report to each residence where registered voters live. Copies must also be made available in the office of the city or town clerk or election commission.

**The city council or board of selectmen may not use public funds to solicit a “yes” or “no” vote on the new charter or charter revision.**



If at the election the question receives more “yes” votes than “no” votes, it will take effect on the day specified in the charter. (If two or more alternative plans are submitted, and both receive a majority of “yes” votes, only the one with the higher number of “yes” votes takes effect.)

Copies of the new charter or charter revision and the clerk's certification of its approval must be sent to the local archives, the Secretary of the Commonwealth (Archives Division), the Attorney General, and the Secretary of Communities and Development. At least every ten years, the city council or board of selectmen must reprint the city or town's current charter and make it available to the public, at cost.

*Legal References:*

- HRA § 3; G.L. ch. 43B, §§ 10, 11, 12

**Step Four:**

**Resubmitting a defeated plan or the “optional” charter procedure.\***

\* There is some doubt about the constitutionality of this procedure since it is not provided in the state constitution.

If a new charter is defeated at the election, but at least 35 percent of the voters voting on it voted “yes”, then ten percent of the registered voters may petition to resubmit it at another regular local election in two years. The statute is not specific about when this petition must be filed, but at least two months before the election would allow a reasonable time for petition certification and ballot preparation. The city or town council or board of selectmen must make the appropriate changes in the dates which were mentioned in the original proposal.

*Legal Reference:*

- M.G.L. ch. 43B, § 12A.

### **Amendment Procedure**

The amendment procedure, unlike the charter adoption or revision procedure just described, can be used to change an existing charter or special act. It is subject to the same content limitations as the adoption or revision procedure (See page 10 ) and further, it cannot be used to change the composition, mode of election or appointment, or terms of office of the local legislative body, the mayor, the selectmen or the city or town manager.

#### **Step One.**

The amendment must be proposed by a two-thirds vote of the local legislative body (the city council or board of aldermen of a city, and the town meeting or town council of a town).

In a city which has a popularly elected mayor as its chief executive, the mayor must also approve of any proposed amendment.

Note that although the amendment must be proposed by the local legislative body, the law also allows it to be suggested to that body by certain local officials or through a petition process. The local body must go through extra steps before it can vote to approve such a suggested amendment. (See page 15.)

#### **Step Two.**

The next step is to file copies of the proposed amendment with the state Department of Community Affairs and to submit copies to the Attorney General, who must render a legal opinion about the proposed amendment within four weeks. If this opinion is unfavorable, the amendment cannot be proposed to the voters unless the local legislative body approves a proposal again by a two-thirds vote. ( The Department of the Attorney General takes the position that this second approval must incorporate the changes required by the unfavorable opinion. )

#### **Step Three.**

The final step in the charter amendment procedure is to submit the proposed amendment to the voters of the city or town. This is done at the first regular (not special) local election at least two months after the proposed amendment becomes final (either four weeks after the initial vote of the local legislative body if the Attorney General's report was favorable, or after the second approval vote, if the report was unfavorable.)

The question which appears on the ballot is:

“Shall this (city)(town) approve the charter amendment proposed by the (name of local legislative body) summarized below?”

A brief summary, prepared by the city solicitor or town counsel, follows on the ballot.

#### **Step Four.**

The requirements for publication and distribution to voters' households (of the full text of charter amendments), and for sending certified copies of approved amendments, apply to these charter amendments just as they do to new charters or charter revisions, as described on page 10.

#### *Legal references:*

- HRA § 4; G.L. ch. 43B, §§ 10, 11, 12.

### **Special Steps for Suggested Amendments**

A suggested amendment may be filed in writing by the mayor, the city or town manager, any city councillor, or any selectman. Or, it may be made by petition filed with the city or town clerk or election commission, in the same form as the petition for the adoption or revision of a charter as described on page 9.

A petition for a suggested amendment must be signed by ten registered voters in a town, and by the number required to sign a charter commission nomination paper (page 11) in a city. The suggested amendment cannot have already been considered by the local legislative body within the last twelve months.

Within three months after the suggested amendment is filed, the city council or board of selectmen must order a public hearing to be held before it or its committee. The hearing must occur within four months after the filing, and the public must be given at least seven days' prior notice in a newspaper.

Finally, the local legislative body must vote in the usual way whether or not to approve the proposed amendment. In a city, this action must take place within six months after the suggestion was filed; in a town, it must occur either by the first annual town meeting held at least six months after the filing date of the petition, or earlier in a special town meeting called for that purpose through the usual petitioning procedure.

If the amendment is approved by the local legislative body, it must go through the normal steps (2-4) to be submitted to the voters as described above.

#### *Legal Reference:*

- M.G.L. ch. 43B, § 10(b).

### **Part Three**

### **The Special Act Charter Method**

A city or town may adopt or change a charter or special act by requesting the state Legislature to pass a special law. To do so, at least two steps are required:

- local approval and
- state legislative action

By tradition, a third step is usually added:

- Acceptance by the voters of the city or town

### **Local Approval**

With a few narrow exceptions, the state legislature must obtain local approval before it can pass a special law relating to a single city or town. The local approval may be general, but it should be specific if the city or town wishes to limit the legislature's freedom of action.

Ordinarily, local approval simply means that the local legislative body votes to request the state Legislature to pass the special act. In a city, the local legislative body is the city council or board of aldermen (with approval of the mayor if ordinarily required) and, in a town, it is the town meeting or town council.

If the local body does not approve the request, in certain cities and towns it is possible to go directly to the voters for the local approval. The question can be placed before the voters by the local initiative petition process, where this process is available under the local charter. Petition requirements and proce-

dures vary with the form of local government. The Elections Division can explain the initiative process for specific situations.

*Legal References:*

- *Local approval required:* HRA § 8 (1). See Board of Selectmen v. Town Clerk, 370 Mass. 114, 345 N.E. 2d 699 (1976); Belin v. Secretary of the Commonwealth, 362 Mass. 530, 288 N.E. 2d 287 (1972); Brown, Home Rule in Massachusetts: Municipal Freedom and Legislative Control, 58 Mass. L.Q. 29 (1973).
- *Nature of local approval:* Newell v. Rent Board, 378 Mass. 443, 446-48, 392 N.E. 2d 837, 839-40 (1979); Nugent v. Town of Wellesley, 9 Mass. App. Ct. 202, 205, 400 N.E. 2d 279, 281 (1980).
- *Local legislative body:* Opinion of the Justices, 375 Mass. 843, 378 N.E. 2d 43 (1978); Opinion of the Justices, 365 Mass. 655, 311 N.E. 2d 44 (1974).
- *Local initiative:* Marino v. Town Council, 7 Mass. App. Ct. 461, 388 N.E. 2d 334 (1979). See G.L. ch. 43, §§ 37-41, 43-44. See also Opinion of the Justices, 370 Mass. 879, 352 N.E. 2d 678 (1976).

### **Legislative Action**

Once a special act charter or charter change has received local approval, it can be filed as a bill by a member of the state legislature.

When filed, the bill will be assigned to a legislative committee for review—usually the Joint Committee on Local Affairs. After a public hearing and a period of study, the committee will report its recommendation on the bill to the legislative body whose member filed it, either the Senate or House of Representatives. If that body approves the bill, it is sent to the other body for consideration. If both houses pass it and it is signed by the Governor (or is passed over his veto by a two-thirds vote of each house), it becomes law.

### **Final Acceptance by Local Voters**

The special act sometimes provides that it will not go into effect until the local voters, in response to a question on an election ballot, have voted to accept it. (This local acceptance is not constitutionally required.)

The city solicitor or town counsel must prepare a fair, concise summary of the act. This summary appears on the ballot unless the special act provides otherwise.

If the local acceptance step is not done, then the charter or special act or amendment will take effect either on the thirtieth day after it is signed or on an effective date specified in the legislation.

*Legal References:*

- *Legislative procedure:* Joint Rule 7B.
- *Effective date:* G.L. ch. 4, § 1.
- *Acceptance not required:* Newell v. Rent Board, 378 Mass. 443, 447 n.6, 392 N.E. 2d 837, 839 n.6 (1979); Nugent v. Town of Wellesley, 9 Mass. App. Ct. 202, 204, 400 N.E. 2d 279, 280 (1980).
- *Summary of Special Act:* M.G.L. ch. 54 section 58A

## Part Five

**PROCEDURE FOR CHALLENGING ADOPTION OR REVISION PETITIONS AS DEFECTIVE**

Registrars must certify the signatures on an adoption or revision petition and report the results to the city council or board of selectmen by filing their report within ten days after the completed petitions were filed.

Within two working days after the deadline by which the Board of Registrars must have completed the certification of names on charter petitions, ( ten days after the petition is filed), any local registered voter may challenge the petition by filing a written objection which states the reasons for the challenge. This objection is filed with the city or town clerk or the election commission.

The registrars must then hold a hearing on the objection. They must send notice of the hearing to both the objector and the petitioners, and both sides will have the opportunity to present evidence and arguments at the hearing. In a city, the city solicitor will sit as a member of the board at such hearings.

The board must reach a decision within four days after the deadline for filing objections or within fourteen days after the last day fixed for filing objections, if the timing of the decision will not prevent the question from qualifying for the ballot no later than thirty days before any previously scheduled election at which the question could appear. After the decision, the losing side may seek judicial review in court.

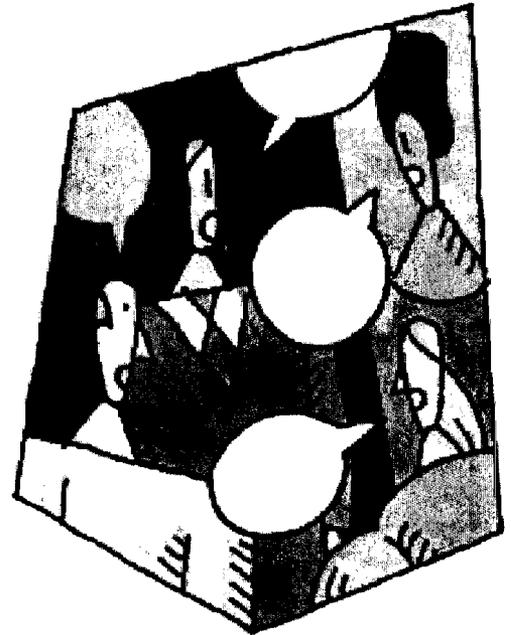
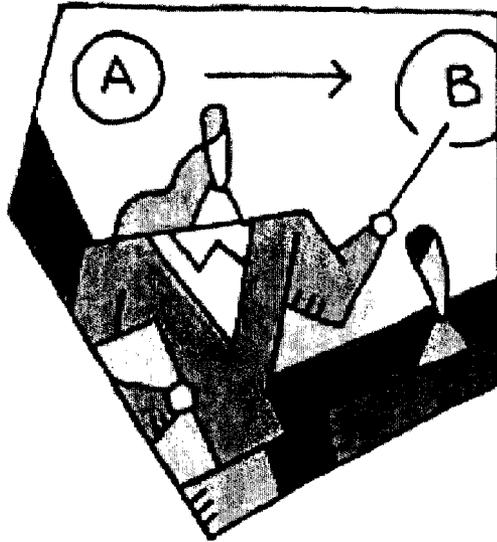
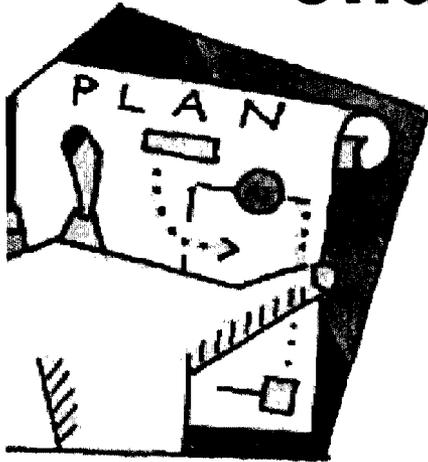
*Legal references:*

- HRA § 3; G.L. ch. 43B, § 3; ch. 53, § 11; ch. 55B, § 7.

<b>SYNOPSIS OF LOCAL CHARTER METHODS</b>		
<b>METHOD</b>	<b>LIMITATIONS</b>	<b>STEPS</b>
Home rule charter method (in general) See page 7.	<ol style="list-style-type: none"> <li>1. Must be consistent with state laws.</li> <li>2. May not address a number of important subjects.</li> </ol>	
Adoption or Revision Procedure, See page 9.	<ol style="list-style-type: none"> <li>1. Requires at least one or two years in most cases.</li> </ol>	<ol style="list-style-type: none"> <li>1. Petition.</li> <li>2. Decision to elect and election of charter commission by voters.</li> <li>3. Charter commission proceedings and reports.</li> <li>4. Approval of proposed charter by voters.</li> </ol>
Amendment Procedure, See page 14.	<ol style="list-style-type: none"> <li>1. Can be used only if city or town already has some charter.</li> <li>2. Cannot change composition, mode of election appointment or term, of major local offices.</li> </ol>	<ol style="list-style-type: none"> <li>1. (Optional) "Suggestion" by officials or by petition.</li> <li>2. Proposal by legislative body.</li> <li>3. Approval by local voters.</li> </ol>
Special Act Charter Method,	<ol style="list-style-type: none"> <li>1. Requires approval by state Legislature.</li> </ol>	<ol style="list-style-type: none"> <li>1. Local approval.</li> <li>2. Action by the</li> </ol>

SEVERAL OPTIONS EXIST FOR

# Changing Local Government Structure



*By MARILYN CONTREAS*

**W**hat prompts a community to examine its local government structure? There can be as many reasons as there are cities and towns, but some of the catalysts might include the following:

- Retirement of key personnel
- An inability to attract candidates to serve in either elected or appointive office
- A perception that municipal departments are not communicating or coordinating functions as they should
- An increase in population and the resultant increase in service demands
- Poor town meeting attendance
- A need for greater oversight of financial matters and service delivery

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A board of selectmen may appoint an ad hoc committee (e.g., a “town government study committee”), or the mandate may come from town meeting, with the moderator appointing such a committee. These examinations may be specific (“Do we need a town administrator?” “What are the pros and cons of establishing a consolidated finance department?”) or more general (“examine town government structure and make recommendations”). Whatever the catalyst, and whatever the scope of the examination, local officials will need to know the parameters for local government structural change.

Massachusetts state law provides the following routes for cities and towns to make changes in the organizational structure of local government:

- Using bylaws and “permissive” legislation to enact structural change
- Election of a charter commission and subsequent adoption of the commission’s proposed charter
- A petition for enactment of special municipal legislation

These vehicles can be used for a variety of structural changes, including but not limited to:

- Changing an office from elected to appointed status
- Consolidating like functions (e.g., public works, finance) in a single department
- Establishing the position of town administrator

Some structural changes can be accomplished *only* by a home rule charter or special act charter, such as:

- Changing the size, composition or term of the legislative body
- Changing the term of the chief executive
- Authorizing town meeting to make certain future structural changes by bylaw, ordinance or adoption of an administrative code
- Assigning certain powers and duties to the town manager or administrator

## Bylaws and Permissive Legislation

Towns may accomplish some structural, administrative and organizational changes through adoption of enabling legislation and implementing bylaws. Enabling or

“permissive” legislation gives communities the authority to adopt a state law in order to accomplish a structural change; it is optional, in that communities determine when and if the law is responsive to their plans for structural change.

Chapter 41, Section 1B (enacted in 1997), allows a vote of town meeting followed by a ballot vote at the annual town meeting/election to change certain elected positions to appointments of the board of selectmen (applies to clerk, treasurer, tax collector, assessors, auditor, highway

## In a Nutshell: Routes for Changing Local Government

### Bylaws and “Permissive” Legislation

- Can be used to change certain elected positions or boards to appointed, allow selectmen to act as certain offices; or create position of town administrator
- Changes require town meeting or town election vote

### Home Rule Charter

- Elected charter commission prepares new charter
- Charter defines structure of local government
- New charter generally proposes significant changes to structure, such as creation of town manager or administrator position, changing boards or commissions, or consolidating or creating departments
- Requires approval at annual town election

### Special Municipal Legislation

- Town submits proposed structural change to Legislature
- Requires legislative approval
- Can be used to create town manager or administrator position

surveyor, sewer commissioners, road commissioners, tree warden, constables, and boards of health). Elected officials in office at the time of such vote would complete their terms before the appointment provisions took effect. (Section 1B does not apply to boards of selectmen or school committees, which must remain elected.)

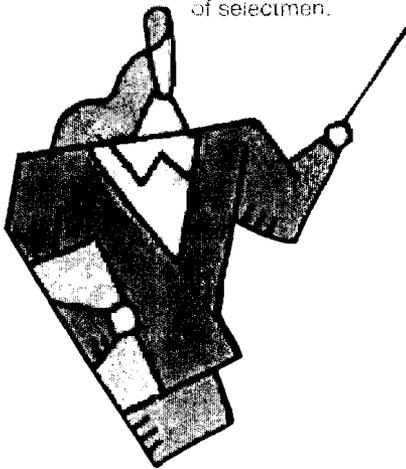
Chapter 41, Section 21, allows selectmen to act as certain offices (water and sewer board, water commission, water and municipal light commissioners, municipal light board, sewer commissioners, park commissioners, board of public works, board of health, board of assessors, commission on public safety).

*continued on page 24*



## Interesting Local Government Facts

- Norwood was the first town to secure passage of a special act that included a town management position ("general manager")
- Andover is the largest town with an open town meeting.
- Framingham is the largest town with a representative town meeting.
- The largest town meeting membership is in Fairhaven; the smallest is in Saugus.
- Three towns have replaced representative town meeting by returning to open town meeting: Seekonk, Athol and Webster.
- Wakefield is the only town with a seven-member board of selectmen.



For Chapter 41, sections 1B and 21, questions that would authorize the board of selectmen to appoint particular offices or multiple-member bodies must be placed on the ballot at an annual election. Questions may be placed on the ballot by a vote of a town meeting held at least sixty days before the annual town meeting. Questions authorizing selectmen to act as certain boards, under Section 21, may be placed on the ballot upon petition by ten percent of qualified voters, with the petition being filed with selectmen at least sixty days before the annual town meeting.

Town officials may be interested in looking at these options if individuals in these positions are retiring and no one is interested in seeking such an elective office, but would be willing to serve in an appointed capacity. If the town is growing or functions are expanding, but the town does not yet see a need to create new boards and commissions, the "act as" provisions can provide some direction until the town is ready to create the individual boards. Towns should consider that such arrangements may need to be interim in nature, given the responsibilities and regulatory enforcement duties of some of these boards (e.g., board of health, water and sewer board). Town officials are always advised to review options with municipal counsel prior to proceeding.

Selectmen also may be granted the authority to appoint cemetery commissioners, police and fire chiefs, assessors, superintendents of streets, or boards of health. Communities may want to use this option if no one is seeking elective office, but the town wishes to retain these offices as separate entities. This option also requires a town meeting vote.

Other enabling or "permissive" options include:

- Establishing the position of town administrator (Ch. 41, Sect. 23A): For several decades, this was the most popular route for establishing administrative positions. (Referenced in the statute as "executive secretary" when first enacted in 1956; it was amended in 1996 to insert the term "town administrator," a more common title within the profession.) The statute allows the board of selectmen to delegate certain duties of the board to a town administrator. Use of this option is

now seen most often in communities that have not undertaken any major actions—such as a home rule or special act charter—to centralize local government, and where there are more elected offices for administrative positions such as treasurer, collector and clerk.

- Appointment of assessors by the selectmen (Ch. 41, Sect. 25)
- Combining the positions of treasurer and collector (Ch. 41, Sect. 1). The town may vote to authorize the treasurer to act as collector.
- Appointing town clerk as town accountant, if he or she holds no other office involving the disbursement or receipt of funds (Ch. 41, Sect. 55)

For larger, more multi-faceted operations, towns may want to examine the following options:

- Chapter 40N allows the establishment of a water and sewer commission as a body corporate and politic.
- Chapter 43C provides a procedure for creating three consolidated departments: finance, community development and inspections. Chapter 43C defines the features of bylaws establishing these departments. The town of Hanover and the city of Chelsea are among the communities that have used Chapter 43C to accomplish department consolidation.

## Home Rule Charter

Communities seeking to make more comprehensive changes in the local government charter may elect a charter commission of nine persons to prepare a home rule charter for the voters' consideration. The option of preparing a home rule charter became available in 1966 with the adoption of the Home Rule Amendment in the Massachusetts Constitution. Massachusetts does not prescribe the form of government based on a community's population, tax base or other category. The modest parameters established by the state's constitution initially in 1821, and modified to include the limited town meeting option in 1920, are as follows:

- Towns above 12,000 population may adopt a city form of government
- Towns above 6,000 population may adopt a limited (representative) town meeting form of government
- Towns below 6,000 population must operate with an open town meeting

Further, there are several statutes referencing “town manager” or “town administrator,” but no statutory definition of these terms. The position is usually defined by the home rule or special act charter creating or revising the position, or in general terms in a town bylaw if a town administrator is adopted pursuant to Chapter 41, Section 23A.

Historically, the Legislature demonstrated greater interest and concern in how cities were governed, providing four plans of government that could be adopted by cities in 1915. Colloquially, these plans are known as Strong Mayor, Weak Mayor, Commission, and Council-Manager (Plans A, B, C, and D). Plan E, a council-manager variation with voting by proportional representation, was added to the statute in 1938. Plan F, allowing for the partisan (party identification) election of a mayor and council, was added in 1959. After passage of the Home Rule Amendment in 1966, the Legislature decided that the provisions of Chapter 43 for adopting these plans could no longer be used. Thus, there are now no “model” plans for either city or town government.

More than 130 home rule charter commissions have been elected since the adoption of the Home Rule Amendment in 1966. The procedures for creation of a charter commission are outlined in Chapter 43B of the Massachusetts General Laws. In summary, any city or town, upon petition of fifteen percent of the registered voters, may vote to elect a nine-member charter commission to prepare a charter. A charter serves as the basic framework of the government structure, identifying officials to be elected and appointed, the size, term and composition of the legislative body, appointment authority, operating and capital budget preparation, and organization of departments. Many communities with home rule charters have put their charters on the city or town Web site, where they are easily accessible.

A charter commission has a maximum of eighteen months to prepare a proposed charter, but may choose to complete the task in ten months. Following its election, a commission considers the options for changing local government structure and seeks participation from residents via public meetings, hearings, publication of a preliminary report, and issuance of a

final report. The requirements for public participation are described in Chapter 43B. To take effect, a charter proposal must be adopted by a majority of voters at a municipal election.

## Home Rule Charters

### Adopted With Representative Town Meeting:

Auburn  
Billerica  
Chelmsford  
Dedham  
Dartmouth  
Falmouth  
Natick  
Reading  
Stoughton  
Walpole  
Winchester

### Adopted With Open Town Meeting:

Acton  
Acushnet  
Ashland  
Athol  
Bedford  
Bellingham  
Blackstone  
Bourne  
Chatham  
Dracut  
Eastham  
Easton  
Grafton  
Harwich  
Hudson  
Longmeadow

Lunenburg  
Lynnfield  
Mansfield  
Marshfield  
Mashpee  
Maynard  
Medfield  
Middleton  
Millbury  
Millis  
Nahant  
North Andover  
Northborough  
Northbridge  
North Reading  
Norton  
Norwell  
Orleans  
Oxford

Provincetown  
Rockland  
Salisbury  
Scituate  
Seekonk  
Stow  
Sturbridge  
Sutton  
Townsend  
Truro  
Uxbridge  
Wakefield  
Wareham  
Webster  
Wellfleet  
Westborough  
Westwood  
Winchendon

*Note: Charters for Millis and Rockland did not originally contain provisions for a management position.*

In towns, some charter commissions follow a ten-month schedule and present a charter proposal to the voters at the annual election one year following the commission’s election. If the commission chooses to follow the eighteen-month schedule provided in the law, the charter proposal would be presented to the voters at the municipal election two years following the election of a commission. (This approach responds to cities with biennial elections.)

The election of a commission, the preparation of a charter, and the submission of a proposal to the voters is a major undertaking. Most towns proposing home rule charters include one or more significant changes in their structure, including but not limited to:

- Creation of a general management position (town administrator, town manager, etc.)

*continued on page 26*



- Changing elected boards, commissions and officials to appointed status
- Establishing or consolidating local departments (including enabling provisions to allow organizational changes via bylaw or ordinance adoption as circumstances require)
- Establishing procedures for preparation of the operating budget and capital plan
- Providing “citizen safeguard” measures such as initiative, referendum and recall

The Department of Housing and Community Development is available to provide technical assistance to charter commissions. The department serves as a repository for all proposed home rule charters and prepares several publications to guide commissions in the charter preparation process. Department staff have also participated in meetings and workshops on this topic throughout the state.

## Special Municipal Legislation

Prior to the adoption of the Home Rule Amendment in 1966, the most comprehensive changes in local government were made by means of a petition for special legislation (a “special act charter”). This option remains available today and has been used in approximately forty communities. (See list, below.) Another eleven have secured passage of special acts to create the position of town manager or town administrator.

The following is the procedure governing special act adoption:

1. Passage, by majority vote at town meeting, of a warrant article or resolution proposing the special legislation
2. Petition to the Legislature to enact the proposed legislation
3. Hearing by assigned committee of the Legislature
4. Approval of the petition by House of Representatives and Senate
5. Signing of special legislation by the governor

This process may be completed in as little as one year. In some instances, the petition may require that the act become effective only upon acceptance by a majority of voters at the next regular municipal election (sometimes referred to as ratification). In other instances, the act may contain a certain date when the provisions take effect, or the act may state that its provisions become effective upon passage.

Communities can also use the special act route to make more discrete changes (e.g., combining the positions of an appointed collector and treasurer, changing an elected board or commission to an appointed one, creating a consolidated department, or adopting recall provisions).

The Legislature’s Web site ([www.mass.gov/legis](http://www.mass.gov/legis)) includes the manual for preparing proposed legislation and provides specific guidance regarding the submission of “home rule petitions” (special municipal legislation).

Any procedural option for structural change under consideration should be reviewed by municipal counsel prior to proceeding. Municipalities may be guided by the Home Rule Amendment, which defines changes in the legislative body, chief executive or town manager as requiring adoption or revision of a home rule charter or enactment of special legislation. ❁

### Towns that Used Special Act Charters to Create Town Manager or Administrator Position

Abington	Framingham	Middleborough	Sudbury
Amherst	Great Barrington	Needham	Swampscott
Andover	Holden	Norwood	Tewksbury
Arlington	Hull	Plymouth	West Boylston
Ashburnham	Ipswich	Sandwich	Westford
Becket	Lakeville	Saugus	Weston
Concord	Lee	Sheffield	Williamstown
Dalton	Lenox	Shrewsbury	Wilmington
Danvers	Lexington	Spencer	Yarmouth
Foxborough	Medway	Stoneham	

*Note: Weymouth and West Springfield had special acts for town government prior to adopting a home rule charter providing for a city form of government. Acton replaced its special act with a home rule charter. Amherst, Danvers and Framingham have had more than one special act. Swampscott’s special act is an extensive revision of its home rule charter.*

### Special Acts Used to Create Town Manager or Administrator Position

Brookline	Cohasset	Manchester-	Norfolk
Burlington	Duxbury	by-the-Sea	Somerset
Carver	Holliston	Nahant	Wayland

*Note: Dartmouth replaced special act via home rule charter adoption. Hopedale repealed its special act in 1997.*