

# HOUSE . . . . . No. 4975

By Mr. Peterson of Grafton, petition of George N. Peterson, Jr., and Edward M. Augustus, Jr., (by vote of the town) for legislation to establish the position of town manager of the town of Upton under the jurisdiction of the board of selectmen of said town. Municipalities and Regional Government. [Local Approval Received.]

## The Commonwealth of Massachusetts

In the Year Two Thousand and Eight.

AN ACT ESTABLISHING THE OFFICE OF TOWN MANAGER IN THE TOWN OF UPTON.

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

- 1 SECTION 1. As used in this act, the following words shall have  
2 the following meanings:—  
3 “Board”, the Upton board of selectmen.  
4 “Employee(s)”, persons under the jurisdiction of the board who  
5 act on behalf of the town, whether appointed or hired, and who  
6 receive compensation from the town. For specific positions refer to  
7 the Personnel By-laws of the town.  
8 “Hiring Authority”, persons, boards and committees specifically  
9 empowered to employ individuals on behalf of the town.  
10 “Manager”, the town manager.  
11 “Town”, the town of Upton.

- 1 SECTION 2. There shall be an administrative officer in the town  
2 of Upton known as the manager. The manager, reporting directly to  
3 and supervised by the board shall be the chief administrative officer  
4 of the town. The manager shall not set town policy but shall ensure  
5 that there is appropriate coordination in the implementation of town  
6 policy, working with the board and all elected and appointed boards  
7 and commissions.  
8 The following responsibilities and authority shall devolve from  
9 the board to the manager:—  
10 1) hiring, firing and disciplining any and all employees under the  
11 jurisdiction of the board, pursuant to Section 4K below;

12 2) compiling and recommending to the board a balanced budget  
13 for the departments under the jurisdiction of the board for approval  
14 in its entirety;

15 3) fixing the compensation of all town officers and employees  
16 under the jurisdiction of the board within the appropriated amounts;

17 4) reorganizing town departments under the jurisdiction of the  
18 board for more efficient operation;

19 5) acting as the town's chief procurement officer; and

20 6) signing the warrants for payment of town obligations.

21 The manager shall supervise, manage and coordinate the day-to-  
22 day activities of all town departments and employees under the jurisd-  
23 iction of the board and coordinate all activities of these departments  
24 with the activities of other departments under the jurisdiction of  
25 other elected officials, boards and commissions.

26 With the exception of the board, all elected boards, officials, com-  
27 missions, trustees and committees are exempt from any and all pro-  
28 visions of this act. This exemption includes the departments,  
29 employees and appointments of other elected boards, commissions  
30 and committees of the town.

1 SECTION 3. The manager shall be appointed by the board on the  
2 basis of executive and administrative qualifications and other hiring  
3 requirements set forth by the board. The manager shall be a person  
4 especially suited by a combination of education, training and profes-  
5 sional experience to perform the duties of the office. The manager  
6 shall not serve in elected office in the town's government for at least  
7 12 months before the appointment. The manager shall devote full  
8 time to the office and shall not hold any other public office, elected  
9 or appointed, nor engage in any other business or occupation during  
10 the term unless that service is approved in advance by the vote of the  
11 board. The manager shall be subject to the personnel by-laws of the  
12 town unless the board exempts specific provisions of those by-laws  
13 as defined in a signed contract between the town and the applicant.  
14 The board may enter into a contract with the manager not to exceed  
15 3 years in length setting forth the terms and conditions of the man-  
16 ager's employment.

1 SECTION 4. The manager shall be responsible to the board and  
2 shall be accountable to the board, for the efficient and orderly con-

3 duct of the departments and functions placed in his charge as man-  
4 ager by this act and for the proper execution of the following powers  
5 and duties:—

6 (a) The manager shall be the hiring authority for all employees  
7 under the jurisdiction of the board. The manager shall act in confor-  
8 mance with the personnel by-laws of the town. The manager shall  
9 oversee the efficient operation and administration of all officers,  
10 divisions and departments appointed by him. No appointment, disci-  
11 plinary action or termination by the manager of a town officer or  
12 employee shall take effect within 15 days of notice being provided  
13 to the board. The board may approve or disapprove the manager's  
14 proposed appointment within said 15 days, or the board may waive  
15 the 15 day right of refusal by a vote at an open meeting. The board  
16 may vote, in open session, to disapprove an appointment and shall  
17 state the reason or reasons, which shall be provided in the meeting  
18 minutes. The board shall conduct any meeting to consider a pro-  
19 posed disciplinary action or termination of a town officer or  
20 employee in accordance with applicable law.

21 (b) In conjunction with the chair of the board, prepare and dis-  
22 tribute agendas for the board's meetings. The manager or to his  
23 designee will be the recording and corresponding secretary for the  
24 board;

25 (c) Ensure that all of the meetings of the board are properly  
26 posted and are in accordance with local, state and federal laws.  
27 Attend aforesaid meetings unless requested by the board not to be in  
28 attendance or upon approval by the chairman of the board of a  
29 request by the manager to be excused from attendance. The manager  
30 shall have the right to speak at the aforesaid meetings but shall not  
31 have a vote.

32 (d) Prepare warrants for special and annual town meetings for  
33 consideration and signature by the board in compliance with town  
34 by-laws. Attend all sessions of annual and special town meetings  
35 unless excused by the board and be prepared to answer all questions  
36 concerning warrant articles.

37 (e) Work in conjunction with the chair of the board and town  
38 counsel

39 regarding any litigation or other legal matters in which the town  
40 has an interest, act as liaison between the town counsel and the  
41 board and affected town departments and officials, review and

42 approve new requests, other than those of the chairman of the board,  
43 for use of town counsel on new matters, and provide the board with  
44 monthly status reports on legal issues and concerns.

45 (f) The manager shall have the authority to execute any contracts  
46 on behalf of the town up to \$25,000.00.

47 (g) The manager shall serve as chief procurement officer of the  
48 town responsible for purchasing all supplies, materials and equip-  
49 ment for the departments under the jurisdiction of the board. Pur-  
50 chases by other boards shall be reviewed by the manager to ensure  
51 that they conform to all state and local laws and regulations. The  
52 manager shall keep a full and complete inventory of all town prop-  
53 erty, both real and personal.

54 (h) Manage the town's insurance programs and serve as the con-  
55 tact with the insurance providers.

56 (i) Responsible for the administration of personnel and personnel  
57 matters, including the personnel by-laws, files and all personnel  
58 policies that the board and the town may adopt. Such responsibilities  
59 shall include the enforcement of personnel policies, rules and regula-  
60 tions and managing personnel costs such as salaries, benefits, over-  
61 time and use of town-owned vehicles for employees under the  
62 jurisdiction of the board.

63 (j) Evaluate in accordance with the personnel by-laws all of the  
64 town officers and employees under the board.

65 (k) Serve as the town's Americans With Disabilities Act director  
66 and affirmative action officer, and administer the town's affirmative  
67 action program.

68 (l) Fix the compensation of all town officers and employees  
69 within the limits established by the personnel board, the relevant  
70 body and the appropriation.

71 (m) Administer all applicable general and special laws, and all  
72 applicable by-laws, and regulations and implement all lawful goals  
73 and policies established by the board and provide reports to the  
74 board when appropriate;

75 (n) Be responsible for keeping full and complete records of the  
76 administrative activities of the town and render a full report of the  
77 prior fiscal year to the board within 3 months of the end of that year.  
78 The manager shall have access to all town books and records for the  
79 performance of duties.

80 (o) Keep the board informed as to the financial condition and  
81 needs of the town and recommend to the board any actions that  
82 should be taken.

83 (p) Serve as arbitrator of grievances and chief union negotiator for  
84 all collective bargaining agreements under the jurisdiction of the  
85 board. The board from time to time may provide advice and guide-  
86 lines to the manager. The board shall retain the authority to execute  
87 the union contract agreements.

88 (q) Respond to and coordinate local response to emergency situa-  
89 tions.

90 (r) Establish and maintain positive community relations with local  
91 organizations, groups and residents.

92 (s) Receive and act on questions and complaints filed with the  
93 board or the manager and inform the board of the status of the reso-  
94 lution.

95 (t) Serve as the board's liaison to news outlets, including the  
96 preparation of news releases and acting as spokesperson to the press  
97 when authorized by the board.

98 (u) Prepare written reports as directed by the board.

99 (v) Perform other duties required by the by-laws, or votes of the  
100 town meeting or by the board.

1 SECTION 5. The manager shall have the following budgetary  
2 powers and responsibilities:—

3 (a) The manager shall prepare and present annually to the board  
4 for its review, approval and recommendations to the finance com-  
5 mittee, detailed budgetary estimates of amounts necessary for the  
6 administration of all town boards, officers, committees, divisions  
7 and departments under the jurisdiction of the board or the manager  
8 for the ensuing fiscal year, including both capital and operating  
9 items. The manager shall present a requested balanced budget to the  
10 finance committee.

11 (b) The manager shall review the warrants for all town meetings  
12 and ballot questions to ensure that they are proper and legal and that  
13 there are sufficient funds available for implementation.

14 (c) The manager shall approve the warrants for the payment of  
15 town obligations after reviewing the expenditures and ensuring that  
16 they are proper and within the appropriation. The signature of the  
17 manager is sufficient for payment by the treasurer.

18 (d) The manager shall have the authority to reorganize depart-  
19 ments under the jurisdiction of the board for more efficient use of  
20 town resources in order to ensure that departmental activities are  
21 conducted within the budget as authorized by town meeting.

22 (e) The manager shall ensure that the complete and full records of  
23 the financial activity of the town are maintained in accordance with  
24 state, federal laws and the town by-laws and render quarterly reports  
25 to the board. The board may require interim or condensed reports  
26 from time to time.

27 (f) The manager shall seek out, prepare, coordinate and file appli-  
28 cations for state, federal, and private grants.

1 SECTION 6. During a temporary absence of 30 days or less, the  
2 manager shall designate by a letter filed with the board, a qualified  
3 administrative employee to exercise the powers and perform the  
4 duties of the manager not admitting to delay. If the manager fails to  
5 do so, or the person fails to serve to the satisfaction of the board, the  
6 board may appoint a qualified administrative employee or officer to  
7 serve. During an absence of greater than 30 days or a vacancy in the  
8 office the board shall designate an interim manager with the full  
9 powers and authority of the manager.

1 SECTION 7. During the transition period from an active adminis-  
2 trative board to the manager form of administration as defined by  
3 this act, the position of administrative assistant to the board may  
4 exist for a period of time not to exceed 90 days to assist the manager  
5 once hired. The length of the 90 day transition period may be short-  
6 ened at the discretion of the board.

1 SECTION 8. The board by an affirmative vote of its members  
2 may initiate the removal or suspension of the manager by adopting a  
3 resolution to that effect. The resolution shall state the reason thereof;  
4 provided, however that no such resolution shall be adopted within 90  
5 days of the annual town election. Any such resolution shall be  
6 adopted by action of the board only at a regularly scheduled meeting  
7 of the board and in open session. The board may suspend the man-  
8 ager for not more than 45 days. A copy of the resolution of suspen-  
9 sion and removal shall be delivered in hand to the manager. The  
10 manager may request a public hearing within 7 business days after

11 the copy of the resolution has been received by filing a written  
12 request with the board. If a request for a public hearing is properly  
13 filed, the board shall conduct a public hearing within 14 days from  
14 the receipt of the written request and, within 7 days after the hearing,  
15 may discharge the manager by a majority vote of the board. If the  
16 manager does not request a public hearing in writing within 7 busi-  
17 ness days of the receipt of the resolution, the board by affirmative  
18 vote, may vote to remove or take any other action relative thereto.

1 SECTION 9. This act shall take effect upon its passage.