

Chapter 334
of the Acts of 2018

T H E C O M M O N W E A L T H O F M A S S A C H U S E T T S

In the One Hundred and Ninetieth General Court

AN ACT ESTABLISHING A TOWN MANAGER FORM OF GOVERNMENT IN THE TOWN OF PEMBROKE.

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 Chapter 284 of the acts of 1991 is hereby repealed.

SECTION 2. There shall be a town manager form of government in the town of Pembroke which shall be established as provided in this section.

Section 1. CONTINUATION OF EXISTING GOVERNMENT

(A) Continuation of Existing Laws, By-Laws, Personnel, Etc.

All special acts, by-laws, rules and regulations in force on the effective date of this act that are not inconsistent with this act shall continue in full force until amended or repealed. Elected and appointed officers, boards, commissions and committees shall have all of the powers, duties and responsibilities not inconsistent with this act, that are in force on the effective date of this act and given to the respective boards, officers and agencies by law, this act, by-law or town meeting vote.

If any provision of this act conflicts with a federal law or regulation, the federal law or regulation shall govern.

If any provision of this act conflicts with any general or special law or with any by-law, rule or regulation of the town, this act shall govern.

(B) Continuation of Personnel, Contracts, Transfer of Records and Property

Any office or position in the administrative service of the town and any incumbents in any such office on the effective date of this act shall continue to function as it did before the effective date of this act until a change in any such office, position or incumbent is effected pursuant to this act. No contracts or liabilities in force on the effective date of this act shall be affected by the acceptance of this act by the town and any office or department established pursuant to this act shall be the lawful successor of the office or department so abolished.

All records, property and equipment whatsoever of any office or department or any part thereof, the powers and duties of which are assigned in whole or in part to another office or department, shall be assigned to such office or department.

Section 2. SELECT BOARD

(A) Composition

There shall be a 5-member select board who shall be elected for 3-year terms, so arranged that the term of office of as nearly an equal number of members as is possible shall expire each year.

(B) Vacancy in Office

A vacancy in the office of the selectmen shall be filled in accordance with the General Laws.

(C) Executive Powers

(1) The executive powers of the town shall be vested in the select board and the select board shall serve as the chief policymaking body of the town.

(2) The select board shall have all of the executive powers of select boards as provided by law and may enter into intergovernmental, public or private agreements on such terms as it deems beneficial to the citizens of the town.

(3) The select board shall develop and promulgate policy directives and guidelines which shall be followed by all agencies serving under it and, in conjunction with other elected town officers and multiple-member bodies, shall develop and promulgate policy guidelines designed to bring the operation of all town agencies into harmony; provided, however, nothing in this section shall authorize any member of the select board or a majority of such members to become involved in the day-to-day administration of a town agency.

(4) The select board shall enforce the by-laws, rules and regulations for the government of the town to be enforced and shall keep an up-to-date record of all its official acts.

(5) The select board shall appoint the town manager and the town counsel, and shall approve the selection of the town audit firm.

(6) The select board shall be the licensing board of the town and may issue licenses, make all rules and regulations relative to the issuance of such licenses and attach such conditions and restrictions thereto as it deems to be in the public interest. The select board shall enforce the laws relating to businesses that have been issued licenses. The select board may delegate or reorganize any local licensing authority or process notwithstanding any general law to the contrary relating to local governance.

(7) The select board shall provide for timely audits as required by law. An audit shall be conducted by a certified public accountant or by a firm of certified public accountants who shall have no personal interests, direct or indirect, in the fiscal affairs of the town government or any of its officers.

Section 3. TOWN MANAGER

(A) Appointments, Qualifications, Terms of Office and Terms of Employment

(1) Appointments

There shall be an office of town manager in the town of Pembroke. The town manager shall be appointed by the select board for a term of not more than 3 years, as the select board may determine, and the town manager may be

appointed for successive terms. The select board shall create a search committee to assist in the selection of candidates for the position of town manager. The committee shall include 2 members of the select board, 1 advisory board member and 2 members of the general public.

(2) Qualifications

The town manager shall be a person of demonstrated ability with administrative experience in public management or business administration who shall be qualified by reason of education and experience. The educational qualifications shall consist of at least a Bachelor's degree in public administration or a related field; provided, however, that a Master's degree in public administration or business shall be highly desirable. The candidates shall be persons with executive and administrative qualifications, especially fitted by education, training and experience to perform the duties of the office. The town may from time to time establish by-laws to provide additional qualifications as it deems necessary and appropriate.

(3) Terms of Office

The town manager shall devote full time to the duties of town manager's office and shall not engage in any other business or occupation during the term of such employment by the town. The town manager shall not hold elective office in the town during the town manager's tenure as such but the select board may appoint the town manager to any nonelective office or position consistent with the responsibilities of the town manager and such office or position shall be deemed a part of the town manager position. Before entering upon the duties of the office, the town manager shall be sworn to the faithful and impartial performance thereof by the town clerk. The town manager shall not have served in an elected office for the town for at least 24 months prior to appointment as town manager.

(4) Terms of Employment, Additional Qualifications, Compensation

The select board may from time to time establish additional qualifications for the office of town manager. To the extent permitted by law, the terms of the town manager's employment shall be the subject of a written agreement between the parties setting forth the length of service, compensation, annual review, vacation, sick leave, benefits and such other matters, excluding tenure, as are customarily included in an employment contract.

The select board shall set the compensation of the town manager; provided, however, that such compensation shall not exceed the amount appropriated therefor by the town meeting.

Section 4. TOWN MANAGER - POWERS AND DUTIES

The town manager shall be the chief administrative officer of the town. The town manager shall manage all town affairs placed in the town manager's charge by this act, by the select board or by town meeting vote. The town

manager shall implement town policies established by the select board. The functions and duties of the town manager shall include, but not be limited to:

(i) the appointment and removal of all nonelected department heads and the approval of the appointment and removal of all other employees, except employees of the school department and the fire department; provided, however, that the library director shall continue to be appointed by the library trustees; provided further, that the town manager shall consult with the appropriate elected or appointed board, commission, committee or official prior to the appointment or removal of a department head; and provided further, that an appointment to or removal from a department head position shall take effect on the twentieth day following the day that notice of appointment or removal was filed with the select board;

(ii) the approval of appointments made by department heads; provided, however, that department heads shall appoint and may remove assistant department heads, officers, subordinates and employees, including employees serving under elected and appointed boards, commissions, committees and officials for whom no other method of selection is provided in this act, except employees of the school department and fire department; and provided further, that the department head shall consult with the appropriate elected or appointed board, commission, committee or official prior to making any such appointment or removal;

(iii) assuring that all initial appointments made are based on merit and fitness alone;

(iv) the day-to-day supervision of all town departments and directing of the operations of the town, excluding employees of the school department and fire department and the statutory responsibilities and functions of the school committee;

(v) supervising and directing the efficient administration of all officers appointed by the town manager and their representative departments and all functions for which the town manager has been given responsibility, authority or control by this act, by by-law, by town meeting vote or by vote of the select board;

(vi) reorganizing, consolidating or establishing any department or position under the town manager's direction or supervision, at the town manager's discretion and transferring all or part of any unexpended appropriation of a reorganized or consolidated department, board or office to any other department, board or office;

(vii) administering, either directly or through a person appointed by the town manager, all general and special laws applicable to the town, including federal and Massachusetts emergency management agencies' requirements and the by-laws and votes of the town within the scope of the town manager's duties and all policy rules and regulations made by the select board;

(viii) establishing control and data systems appropriate to monitor expenditures by town boards and departments to enable the town manager to make periodic reports to the select board and the advisory committee on the status of the town's finances;

(ix) developing and administering a personnel system including, but not limited to, the determination of rates of pay and the development and implementation of an ongoing training program, evaluation process and personnel and hiring policies, practices and regulations for town employees;

(x) managing all town buildings, properties and facilities, except those under the control of the school committee and conservation commission; provided, however, that the town manager may direct the maintenance of school committee, open space committee and conservation commission buildings, properties and facilities to the extent the school committee, and conservation commission may request and authorize;

(xi) attending and participating in all regular and special select board meetings and town meetings unless excused therefrom by the select board;

(xii) causing full and complete records of meetings of the select board to be taken and maintained and compile reports of the meetings as requested by the select board;

(xiii) acting as the liaison with and represent the select board before state, federal and regional authorities;

(xiv) subject to policies established by the select board, approving all warrants or vouchers, including payroll warrants, for the payment of town funds submitted by the town accountant; provided, however, that any warrants generated by the town manager shall be signed by the select board; and provided further, that if the town manager is unavailable or if there is a vacancy in that office, the select board shall approve all warrants and vouchers;

(xv) Approving all grants submitted on behalf of the town;

(xvi) prosecuting, defending and settling all litigation to which the town is a party, subject to the approval of the select board;

(xvii) inquiring and investigating the conduct and operation of all offices and the performance of the duties of all officers and employees, departments, boards, commissions and any other town agencies;

(xviii) coordinating the activities of employees serving in the office of the town manager and in the office of the select board with those under the control of other officers and multiple-member bodies elected directly by the voters; provided, however, that for this purpose, the town manager may require the persons so elected, or their representatives, to meet with the town manager at reasonable times to effect the coordination and cooperation of all town agencies; and provided further, that the town manager may attend and speak at any public meeting of a multiple-member body;

(xix) performing any other duties consistent with the office of town manager as may be required by by-law, town meeting vote or vote of the select board;

(xx) preparing and submitting at a public meeting to the select board and advisory committee not later than 90 days prior to the annual town meeting a written proposed balanced budget for town government, including the school department, for the ensuing fiscal year;

(xxi) detailing all estimated revenues and expenditures, including debt service for the previous, current and ensuing fiscal years, in the proposed budget from all sources; provided, however, that the proposed budget shall also include proposed expenditures for both current operations and capital expenditures for the ensuing fiscal year, together with estimated revenues and free cash available at the close of the fiscal year, and estimated balances in special accounts; provided further, that the town may, by by-law, establish additional financial reports to be provided by the town manager; and provided further, that all town boards, officers and committees, including the school committee, shall, within the timeframe requested by the town manager, furnish all relevant information in their possession and submit to the town manager, in writing and in such form as the town manager shall establish, a detailed estimate of the appropriations required and available funds;

(xxii) negotiating collective bargaining contracts on behalf of the select board, which contracts shall be subject to approval, ratification and execution by the select board. The select board may authorize the use of additional counsel, as requested by the town manager, to assist the town manager in the negotiations;

(xxiii) administering and enforcing collective bargaining agreements, personnel rules and regulations and town by-laws; and

(xxiv) acting as the chief procurement officer under chapter 30B of the General Laws for the purchase of all supplies, materials, services and equipment for the town and for the bidding, awarding and execution of all contracts, except for school department contracts; provided, however, that specifications for equipment purchases shall be written by the appropriate department heads in consultation with the town manager.

Section 5. TOWN MANAGER - VACANCY

(a) The select board shall fill a permanent vacancy in the office of the town manager as soon as feasible in the manner provided in section 3. In the event of a vacancy, the select board shall, not later than 14 days after such vacancy occurs, appoint a suitable person to temporarily perform the duties of the town manager until a permanent replacement has been selected and sworn in.

(b) The town manager may designate, by letter filed with the town clerk and the select board, a suitable officer of the town to perform the duties of the town manager during the town manager's temporary absence or disability; provided, however, that if the absence or disability shall exceed 30 days, any

designation by the town manager shall be subject to approval of the select board. If the town manager fails to make such a designation or if the person so designated is unable to serve, the select board shall designate a suitable person to perform the duties of the town manager.

(c) An acting town manager's duties shall be limited to acting on matters not permitting of delay. The acting town manager may make temporary, emergency appointments or designations to town offices unless authorized by the select board to make permanent appointments.

Section 6. TOWN MANAGER - REMOVAL, SUSPENSION

(a) The select board may remove or suspend the town manager. Prior to any such removal or prior to a suspension that is to exceed 5 days, notice shall be given to the town manager and the reasons for the proposed action shall be set forth in writing. The town manager shall be afforded an opportunity to meet with the select board and respond to the proposed action. After such meeting, if any, the select board may, upon the affirmative vote of 4 of its members, remove the town manager or suspend the town manager for a period exceeding 5 days.

Section 7. DEPARTMENT OF PUBLIC WORKS

(a) There shall be an elected board of commissioners for the department of public works. The board shall consist of 3 members who shall serve for 3-year, staggered terms. The commissioners in office on the effective date of this act shall continue in office for the remainder of their unexpired terms.

(b) Under the direction of the director of public works, the department of public works shall continue to carry out and have all of the duties and responsibilities of the town's highway, cemetery, tree and park divisions or departments. Except as provided in subsection (d), the department of public works shall have all of the powers, duties and responsibilities that the department of public works had prior to the effective date of this act.

(c) There shall be a director of public works who shall be appointed by the town manager. The director of public works and town manager shall consult with the board of commissioners to develop policy guidelines for the operations of the department of public works. The board shall perform such other advisory functions related to the department of public works as the director of public works or the town manager may request; provided however, that nothing in this section shall authorize any member of the board or a majority of members thereof to become involved in the day-to-day administration of the department of public works.

(d) Notwithstanding subsections (a) to (c), inclusive, the board of public works shall continue to function as a board of water commissioners and shall continue to have all of the powers, duties and responsibilities of the existing board of water commissioners. The board shall continue to set water rates and maintain the Water Enterprise Fund.

(e) The vote of the town at the 1991 town election regarding article 67 is hereby rescinded.

Section 8. TRANSITION PROVISION

The position of town administrator shall be abolished upon the appointment of a town manager. If the town administrator position becomes vacant before a town manager is appointed, the select board shall appoint an acting town administrator to fill such vacancy until the town manager position has been filled pursuant to this act.

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


House of Representatives, December 20, 2018.

Passed to be enacted,

 Speaker.

In Senate, December 20, 2018.

Passed to be enacted,

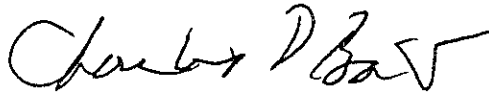
 , President.

December 28, 2018.

Approved,

at

12 o'clock and 12 minutes, P. M.



Governor.