

HOUSE No. 2052

The Commonwealth of Massachusetts

PRESENTED BY:

Colleen M. Garry

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act establishing a department of public works in the town of Tyngsborough.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>	<i>1/18/2023</i>
<i>Edward J. Kennedy</i>	<i>First Middlesex</i>	<i>4/20/2023</i>

HOUSE No. 2052

By Representative Garry of Dracut, a petition (accompanied by bill, House, No. 2052) of Colleen M. Garry (by vote of the town) relative to establishing a department of public works in the town of Tyngsborough. Municipalities and Regional Government. [Local Approval Received.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act establishing a department of public works in the town of Tyngsborough.

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. Establishment and Scope. There shall be a department of public works
2 responsible for the performance of all public works activities of the town placed under its control
3 by by-law, or otherwise, including but not limited to forestry services, protection of natural
4 resources, cemetery, parks, recreation, sewers and sewerage systems, street and roads, and
5 maintenance of all buildings and grounds, other than those under the jurisdiction of the school
6 department, board of library trustees, and the conservation commission, unless otherwise agreed
7 by the department.

8 Powers and Duties. The department of public works shall assume all of the duties and
9 responsibilities in the performance of public works functions, including but not limited to those
10 performed prior to the adoption of the Act by and under the authority of the tree warden, park
11 commission, cemetery commission, board of highway surveyors or road commissioners, and
12 select board. The department of public works shall assume limited duties and responsibilities in

13 the performance of public works functions related to the sewer commission as described in
14 section 5 of this Act.

15 Section 2. Superintendent of Public Works. The department of public works shall be
16 under the direct control of a superintendent of public works who shall be appointed by the town
17 manager and who shall serve at the pleasure of, and be directly responsible to, the town manager.
18 The superintendent shall be a person especially fitted by education, training and previous
19 experience to perform the duties of the office.

20 2.1 Role and Authority. The superintendent of public works shall be responsible for the
21 supervision and coordination of the department in accordance with state statutes, town by-laws,
22 and directives of the town manager. The superintendent may, with the approval of the town
23 manager and select board, establish within the department various operational divisions, such as,
24 but not limited to, highway, facilities, parks and sewers.

25 Section 3. Department Policy Formulation. Unless otherwise described in section 5 of
26 this Act, the select board shall be responsible for the establishment of priorities and policies to
27 govern the operation of the department, and through the town manager, shall have ultimate
28 responsibility therefor.

29 Section 4. Transition. As of the effective date of this act, the offices of board of highway
30 surveyors or road commissioners, by whatever name, and the cemetery commission shall be
31 abolished, the terms of any incumbents thereof terminated and all powers, duties and
32 responsibilities of such offices shall be immediately transferred to the department of public
33 works. No existing contract or liability shall be affected by the abolition or change in the manner
34 of selection of any board or office in this section or the creation of the department of public

35 works, and the department of public works shall in all respects be the lawful successor of such
36 boards, departments and offices so abolished. Any permanent employee of any of the boards or
37 committees or departments abolished by the creation of the department of public works or of a
38 department whose authority has changed as a result thereof, shall be transferred to and become
39 an employee of the department of public works in a capacity as similar to the employee's former
40 position as is practical without loss of seniority, retirement, holiday, sick leave, or vacation. Until
41 such time as a superintendent of public works is appointed, the town manager shall act as the
42 superintendent of public works.

43 Section 5. Board of sewer commissioners. Notwithstanding any other provision of this act
44 to the contrary, the incumbent members of the board of sewer commissioners, referred to as the
45 "sewer commission" both herein and as of the effective date of this act, shall remain elected. The
46 sewer commission shall continue to serve as the authority with respect to any sewer construction
47 projects ongoing at the time this Act takes effect, as well as with any future sewer expansion
48 phases, setting sewer rates, and ensuring compliance with the sewer enterprise fund in
49 accordance with G.L. c. 44 section 53F1/2, including review of all expenditures from the
50 enterprise fund on a regular basis. The superintendent of public works shall serve in an advisory
51 capacity, and provide technical assistance, to the sewer commission on matters within the
52 commission's authority as described in this section. The Sewer Commission shall serve in an
53 advisory capacity to the Board of Selectmen on intermunicipal agreements affecting the town's
54 sewer system, capacity, or flow.

55 5.1 Setting of Rates and Promulgation of Regulations. The board of sewer commissioners
56 shall be authorized to set sewer rates and promulgate regulations in connection with the scope of
57 authority of the department of public works. Prior to taking any action hereunder, however, the

58 sewer commission shall, in conjunction with the superintendent of public works, hold a public
59 hearing for which notice is published in a newspaper of general circulation in the town once in
60 each of two successive weeks, the first publication to be not less than fourteen days before the
61 day of said hearing, and by posting such notice in a conspicuous place in or at town hall for a
62 period of not less than fourteen days before the day of said hearing.

63 5.2 Role of the superintendent of public works. The department of public works, under
64 the authority of a superintendent of public works, shall be responsible for the maintenance of the
65 existing sewer system, day-to-day operations, employees, contracting and procurement, and
66 other matters not under the authority of the board of sewer commissioners as outlined in sections
67 5 and 5.1 of this Act. Appointments at the level of Sewer Senior Foreman or above, including
68 Sewer Administrator, shall be made only after consultation with the sewer commission but shall
69 be the responsibility of the Town Manager per the Act establishing the position of Town
70 Manager in the town of Tyngsborough. Contracts related to any sewer construction projects
71 ongoing at the time this Act takes effect, as well as any future sewer construction expansion
72 phases, shall be approved and signed by the sewer commission. The superintendent of public
73 works shall have a voice, but no vote, in any of the sewer commission's proceedings.

74 5.3 Completion of work. The board of sewer commissioners may, by unanimous vote of
75 the full commission, and after holding a public hearing, determine that no future phases of sewer
76 expansion are required and that the commission shall be abolished. In this instance, the
77 remaining powers and duties of the board will, effective immediately upon abolition of the board
78 of sewer commissioners, transfer to the department of public works in a manner consistent with
79 section 4 of this Act, and the select board shall be responsible for holding public hearings to set
80 sewer rates and promulgate regulations in accordance with section 5.1 of this Act.