

HOUSE No. 3486

The Commonwealth of Massachusetts

PRESENTED BY:

Garrett J. Bradley and Robert L. Hedlund

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 relative to the town manager in the town of Cohasset.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

Garrett J. Bradley

3rd Plymouth

Robert L. Hedlund

Plymouth and Norfolk

HOUSE No. 3486

By Representative Bradley of Hingham and Senator Hedlund, a joint petition (accompanied by bill, House, No. 3486) of Garrett J. Bradley and Robert L. Hedlund relative to the town manager in the town of Cohasset. Municipalities and Regional Government. [Local Approval Received.]

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act relative to the town manager in the town of Cohasset.

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. Chapter 34 of the acts of 1997 is hereby amended by striking out section 2
2 and inserting in place thereof the following section:-

3 Section 2. Designation of Elected Officials

4 (a) Upon the effective date of this act, the registered voters of the town of Cohasset shall,
5 in accordance with any applicable laws, by-laws, votes of the town, or inter-local agreement
6 continue to elect the following:

- 7 (i). selectmen;
- 8 (ii). town moderator;
- 9 (iii). town clerk;
- 10 (iv). school committee members;
- 11 (v). trustees of the Paul Pratt Memorial Library;
- 12 (vi). assessors;
- 13 (vii). board of health members;
- 14 (viii). Cohasset Housing Authority members;
- 15 (ix). planning board members;

- 16 (x). recreation commissioners;
17 (xi). sewer commissioners; and
18 (xii). water commissioners.

19 (b) The powers, duties and responsibilities of elected and appointed officials shall be as
20 now or hereafter provided by applicable provisions of General Laws, special acts, by-laws and
21 votes of the town, except as otherwise expressly provided herein.

22 (c) Notwithstanding the election by the voters of the town of the officers named in this
23 section, such officers shall be available to the town manager for consultation, conference and
24 discussion on matters relating to their respective offices. The town manager may require all such
25 officials, except the selectmen, to prepare reports for the town manager necessary for the
26 administration of any of his responsibilities.

27

28 SECTION 2. Said chapter 34 of the acts of 1997 is hereby amended by striking out
29 section 3 and inserting in place thereof the following section:-

30 Section 3. Powers and Duties of the Board of Selectmen

31 (a) The executive powers of the town shall be vested in the board of selectmen, who shall
32 have all the powers given to boards of selectmen by the General Laws of the Commonwealth of
33 Massachusetts.

34 (b) The board of selectmen of the town of Cohasset shall consist of five (5) persons
35 elected by the voters of the town. The term of each member of the board of selectmen shall not
36 exceed three (3) years or until a successor takes office. The board of selectmen shall annually
37 elect a chairperson from among its members.

38 (c) The board of selectmen shall serve as the chief goal-setting and policy-making body
39 of the town and as such shall not normally administer the day-to-day affairs of the town. The
40 board of selectmen shall set guidelines and policy directives which are to be implemented by the
41 town manager and by other officers and employees appointed by or under its authority. The
42 board of selectmen shall have the power to enact rules and regulations to implement policies and
43 to issue interpretations of the rules and regulations.

44 (d) The board of selectmen shall exercise, through the town manager, general supervision
45 over all matters affecting the interests or welfare of the town.

46 (e) The board of selectmen shall appoint the town manager, town counsel, independent
47 auditor and assistant or special counsels and all members of committees, boards, and
48 commissions except those positions that the town bylaws provide are to be appointed by the

49 Troika (as hereinafter defined), that are elected by the voters, or that, unless provided for by this
50 Act, may be otherwise appointed by town by-law, or the General Laws of the Commonwealth.
51 The Board may make appointments to all positions and committees the Board creates for special
52 or general purposes. For purposes of this act the Troika shall be defined as a group made up of
53 the town moderator, who shall be the chairman of the Troika, chairman of the board of
54 selectmen, and chairman of the advisory committee.

55 (f) The board of selectmen shall have oversight of such boards, committees, positions, or
56 commissions appointed by the board of selectmen.

57 (g) The board of selectmen shall have the responsibility and authority for licenses and
58 other non- personnel related functions as provided by the General Laws and the by-laws of the
59 town of Cohasset.

60 (h) The board of selectmen shall be responsible for and shall approve the form and
61 content of all town meeting warrants before they are submitted to town meeting for deliberation.

62 (i) The board of selectmen shall be responsible for establishing and maintaining a written
63 process for the preparation of the budget. The selectmen shall issue annually one or more written
64 budget messages including fiscal guidelines and the timeline for budget makers at the beginning
65 of each budget cycle or at a time established by the town by-laws.

66 (j) The board of selectmen shall review the annual proposed budget prepared by the town
67 manager and make changes as the Board deems advisable. The town manager shall present the
68 budget which incorporates the changes of the board of selectmen to the town meeting.

69

70 SECTION 3. Said chapter 34 of the acts of 1997 is hereby amended by striking out
71 section 4 and inserting in place thereof the following section:-

72 Section 4. Appointment of the Town Manager

73 (a) The board of selectmen shall create a search committee to assist in the selection of
74 candidates for the position of town manager. The candidates shall be persons of demonstrated
75 ability with administrative experience in public management or business administration who are
76 qualified by reason of education and experience. The town shall from time to time, by bylaw,
77 establish qualifications for the position of town manager. The board of selectmen, by a majority
78 vote of its full membership, shall appoint a person to perform the duties of town manager. The
79 town manager shall be a citizen of the United States.

80 (b) No selectman or former selectman within fifteen (15) months of holding such office
81 shall be eligible to be appointed to the position of town manager.

82 (c) The board of selectmen may enter into a formal contract with the town manager. They
83 may set contract terms which shall have precedence over any personnel by-laws.

84 (d) The town manager may be appointed for successive terms of office, no term of which
85 shall be more than three years or until a successor takes office. Before entering upon the duties of
86 his office, the Town Manager shall be sworn in the presence of a majority of the members of the
87 board of selectmen, to the faithful and impartial performance thereof by the town clerk or a
88 notary public.

89 (e) The town manager shall execute a bond in favor of the town of Cohasset for the
90 faithful performance of his duties in such sums and with such sureties as may be fixed and
91 approved by the board of selectmen, the cost for which will be borne by the town.

92 (f) The board of selectmen shall set the compensation for the town manager, not to
93 exceed an amount appropriated by the town meeting.

94

95 SECTION 4. Said chapter 34 of the acts of 1997 is hereby amended by striking out
96 section 5 and inserting in place thereof the following 7 sections:-

97 Section 5. Removal of Town Manager

98 (a) The board of selectmen, by a majority vote of its full membership, may remove the
99 town manager. At least thirty (30) days before such removal shall be effective, the board of
100 selectmen shall file a preliminary written resolution with the town clerk setting forth reasons, if
101 any, for the proposed removal, a copy of which resolution shall be delivered to the town
102 manager.

103 (b) The town manager may reply in writing to the resolution and may request, in writing,
104 a public hearing. The request for hearing must be received by the town clerk no later than ten
105 (10) days after the town manager's receipt of the resolution. If the town manager so requests, the
106 board of selectmen shall hold a public hearing not earlier than ten (10) days nor later than twenty
107 (20) days after the filing of such request.

108 (c) Following the public hearing or, if none, at the expiration of thirty (30) days following
109 the filing of the preliminary resolution, the board of selectmen may adopt a final resolution of
110 removal.

111 (d) As part of the preliminary resolution, the board of selectmen may suspend the town
112 manager from duty.

113 (e) Nothing contained herein shall limit the authority of the board of selectmen to
114 suspend or remove the town manager as provided by state law.

115 (f) Any suspension may be with or without pay.

116 Section 5A. Absence or Vacancy of Town Manager

117 (a) During a temporary absence, not to exceed 30 days, the town manager shall designate
118 by a letter filed with the chair of the board of selectmen, an administrator to perform the duties of
119 the office. Such delegation shall be limited to those matters not allowing of delay during the
120 manager's absence.

121 (b) If, in the sole opinion of the board of selectmen, the town manager's designee is
122 unable effectively to perform the duties of the office during the temporary absence of the town
123 manager, the selectmen shall have the absolute right to appoint a person to perform the duties of
124 the office, which duties shall be limited to those matters not allowing of delay during the town
125 manager's absence.

126 (c) During an absence of the town manager for 30 or more days, due to disability, illness,
127 or other circumstance, the board of selectmen shall appoint an acting town manager for the
128 duration of any extended absence. Such designation will cease upon the return of the town
129 manager.

130 (d) If the individual serving as acting town manager is a town officer or employee, the
131 individual shall return to the position held prior to being appointed as the acting town manager.

132 (e) No member of the board of selectmen shall serve as acting town manager.

133 (f) If the board of selectmen determines, by majority vote of the full membership, that the
134 town manager will be unable to resume the duties of the job for any reasons, including but not
135 limited to resignation, termination or illness, the office of town manager shall be filled as soon as
136 practicable by the board of selectmen who may appoint an acting town manager who may serve
137 until a town manager is appointed.

138 (g) Irrespective of the duration of the absence of the town manager, the board of
139 selectmen shall determine the powers and responsibilities of any acting or temporary town
140 manager.

141 Section 5B. Administrative Responsibilities of the Town Manager

142 (a) The town manager shall be the chief administrative officer of the town and shall be
143 responsible to the board of selectmen for the effective management of all town affairs placed in
144 the town manager's charge by this act, by the board of selectmen, by by-laws, or by vote of town
145 meeting, and for the implementation of town policies placed in the town manager's charge by the
146 board of selectmen.

147 (b) The town manager shall supervise all town departments with the exception of the
148 School District and direct day to day affairs of the town.

149 (c) The town manager shall be responsible for seeing that the budget is administered as
150 adopted by town meeting and in accordance with the General Laws, this act and the town by-
151 laws.

152 (d) The town manager shall advise the board of selectmen of all matters requiring action
153 by them or by the town.

154 (e) The town manager shall oversee the town's personnel system and staff in accordance
155 with the town by-laws as amended, personnel evaluation policies and practices, enforcement of
156 labor contracts, labor relations, collective bargaining and state and federal equal opportunities
157 law compliance functions of the town.

158 (f) The town manager shall attend all meetings of the board of selectmen, except when
159 excused, having the right to speak but not vote; and attend all annual and special town meetings
160 and shall be permitted to speak when recognized by the moderator.

161 (g) The town manager shall administer, either directly or through a person or persons
162 appointed by the town manager in accordance with this act, all provisions of General Laws and
163 special acts applicable to the town, all town by-laws, and all regulations established by the board
164 of selectmen.

165 (h) The town manager shall have access to all information necessary for the proper
166 performance of the duties of town manager in accordance with the town bylaws, not including
167 however attorney-client privileged information which is provided to or by the board of
168 selectmen, unless the board specifically authorizes such access. Notwithstanding the preceding
169 sentence, the town manager and any person acting under the Town Manager's supervision,
170 direction, or control shall have no authority to access the electronic communications of any town
171 officer or employee, or information maintained in a personal work area or computer of any such
172 officer or employee, unless such access has been approved in advance by the board of selectmen
173 or by a member designated by the board to act on such matters.

174 (i) The town manager may, without notice, cause the affairs of any division or
175 department, except the School District, or the conduct of any officer or employee thereof to be
176 examined.

177 (j) The town manager shall keep the board of selectmen fully informed regarding all
178 departmental operations, fiscal affairs, general problems, and administrative actions, and to this
179 end shall submit periodic reports to the board of selectmen.

180 (k) The town manager shall coordinate the activities among boards, commissions, and
181 committees, concerned with long-range municipal planning, including physical or economic
182 development, and environmental or resource protection of the town.

183 (l) The town manager shall be responsible for the maintenance all town buildings,
184 property and facilities except those under the jurisdiction of the housing authority, sewer
185 commission and water commission unless requested by those agencies. The town manager shall,
186 to these ends, develop, keep and annually update a full and complete inventory of all property of
187 the town, both real and personal.

188 (m) Subject to section 3H of this act, the town manager shall be responsible for the
189 preparation of all town meeting warrants in accordance with the town by-laws and distribute, or
190 cause to be distributed, copies of town meeting warrants to the residences of all registered voters
191 of the town.

192 (n) Upon request and with the approval of the board of selectmen, the town manager shall
193 prosecute, defend, or compromise all litigation to which the town is party.

194 (o) The town manager shall keep full and complete records of town manager's office and
195 annually submit to the board of selectmen, unless requested to do so more frequently, a full
196 written report of the operations of the office.

197 (p) The town manager shall devote full working time to the duties of the office, and shall
198 not engage in any business activity during the term of office, except with the written consent of
199 the board of selectmen.

200 Section 5C. Financial Responsibilities of the Town Manager

201 (a) The town manager shall be the chief financial officer of the town.

202 (b) The town manager shall be responsible for controlling all appropriated budget
203 expenditures, which includes the power to approve or reject all warrants including payroll for the
204 payment of town funds prepared by the town accountant in accordance with the provision of
205 section 56 of chapter 41 of the General Laws.

206 (c) Annually, the town manager shall be responsible for the preparation of the proposed
207 budget to be included in the Annual Town Meeting Warrant. The proposed budget shall be
208 prepared in accordance with the most current budget process by the date set pursuant to Section
209 3(i) of this act as approved by the board of selectmen.

210 (d) The town manager shall submit to the board of selectmen by the date established
211 pursuant to Section 3(i) of this act a written proposed budget for the ensuing fiscal year.

212 i. The proposed budget shall detail all estimated revenue from all sources, and all
213 proposed expenditures, including debt service, for the previous, current, and ensuing five (5
214)fiscal years.

215 ii. The proposed budget shall detail all estimated expenditures for current operations
216 during the ensuing fiscal year, detailed by agency, department, committee, purpose, and position.

217 iii. In addition, the town manager shall prepare a written proposed capital improvements
218 budget for the ensuing fiscal year and a five (5) year forecast and include both as part of the
219 proposed annual budget.

220 iv. For the purpose of preparing the budget for the ensuing fiscal year, the town manager
221 shall include an estimate of revenues to be collected and free cash available at the close of the
222 current fiscal year, including estimated balances in special accounts.

223 v. The town manager shall report on the estimated funds required to be levied and raised
224 by taxation to defray all expenses and liabilities of the proposed budget together with an estimate
225 of the tax rate necessary to raise such amount and include the information in the proposed
226 budget.

227 vi. The town manager annually shall submit a town departmental and organizational
228 structure.

229 (e) The town manager shall submit a preliminary budget and capital plan to the board of
230 selectmen, the advisory committee and the capital budget committee pursuant to the budget
231 process set forth in Section 3(i) of this Act. The preliminary budget and capital plan must be
232 submitted no later than seventy (70) days prior to the date of the annual town meeting.

233 (f) To assist the town manager in preparing the proposed annual budget of revenue and
234 expenditures, all boards, officers, and committees of the town, including the school committee,
235 shall furnish all relevant information in their possession and submit to the town manager, in
236 writing in such form as the town manager shall establish, a detailed estimate of the
237 appropriations required and available funds.

238 (g) The town manager shall keep the board of selectmen informed regarding the
239 availability of federal and state funds and how such funds might relate to unmet long-range
240 needs.

241 (h) The town manager shall be responsible for filing all grant applications.

242 (i) After the close of each fiscal year and after the certification of free cash by the
243 Massachusetts Department of Revenue, the town manager, as soon as practicable, will cause to
244 have prepared audited financial statements. Upon completion of the audit, the town manager
245 will promptly distribute the statements to the board of selectmen, chairman of the advisory
246 committee and chairman of the capital budget committee.

247 Section 5D. Appointment Powers of the Town Manager

248 (a) The town manager shall appoint upon merit and fitness alone, and may remove, the
249 police chief, fire chief, director of finance subject to the selectmen's approval by a majority vote

250 of its full membership whose contracts and any changes thereto must be approved by the board
251 of selectmen.

252 (b) The Board of Selectmen shall appoint members of the conservation commission under
253 chapter 40, section 8C of the General Laws.

254 (c) The town manager shall appoint and may remove all Department Heads not included
255 in Section 5D(a) of this act, as that term may be defined in the town organization chart
256 established from time to time by town meeting of the Town of Cohasset, and all employees
257 under the direct supervision of the town manager. In addition, the town manager shall appoint
258 and may remove all officers, subordinates and employees for whom no other method of selection
259 is provided in this act, except employees of the school department.

260 (d) Appointments made by the town manager in Section 5D(c) of this act shall become
261 effective fifteen (15) days following the date of written notice of the appointment is filed with
262 the board of selectmen unless the board of selectmen shall, within that period, by a majority of
263 its members present and voting, vote to reject the appointment or removal.

264 (e) Within the fifteen (15) day period, the board of selectmen may, by a majority of its
265 members present and voting, vote to waive its power to reject an appointment pursuant to
266 Section 5D(d) of this Act, whereupon the appointment shall become effective immediately.

267 (f) All appointments by the town manager not included in Section 5D(a) or 5D(c) of this
268 Act shall become effective immediately.

269 (g) Any employee not protected by civil service law or union contract shall have the right
270 to appeal the town manager's decision to discharge to the board of selectmen. The appeal shall be
271 initiated by filing a written notice of appeal with the town manager within ten (10) calendar days
272 after receiving a written notice of discharge. The appeal shall be conducted pursuant to
273 processes and procedures as may be established from time to time by the town by-laws.

274 (h) The town manager, subject to any applicable provisions of the General Laws relating
275 thereto, may assume, temporarily, the duties of any office which the town manager is authorized
276 to fill by appointment, subject to approval by the board of selectmen.

277 (i) The town manager may appoint such ad hoc committees as he deems necessary.

278 Section 5E. Collective Bargaining

279 (a) The town manager or a negotiating committee authorized by the board of selectmen
280 shall negotiate collective bargaining contracts on behalf of the board of selectmen, which
281 contracts shall be subject to approval, ratification and execution by the board of selectmen.

282 (b) The board of selectmen may authorize use of additional counsel and/or persons to
283 assist the town manager or negotiating committee in the negotiations at their request.

284 Section 5F. Procurement

285 (a) The town manager is the chief procurement officer and shall be responsible for
286 purchasing for all town functions and departments, pursuant to chapter 30B of the General Laws,
287 and all other applicable statutes, procedures, and by-laws. (b) The town manager may, at the
288 request of the school committee, delegate such duties for school department purchasing.

289

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