

HOUSE No. 4607

The Commonwealth of Massachusetts

PRESENTED BY:

Josh S. Cutler and Viriato M. deMacedo

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 town manager form of government for the town of Pembroke.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Josh S. Cutler</i>	<i>6th Plymouth</i>	<i>5/22/2018</i>
<i>Viriato M. deMacedo</i>	<i>Plymouth and Barnstable</i>	<i>5/23/2018</i>

HOUSE No. 4607

By Representative Cutler of Duxbury and Senator deMacedo, a joint petition (accompanied by bill, House, No. 4607) of Josh S. Cutler and Viriato M. deMacedo (by vote of the town) that the town of Pembroke be authorized to establish a town manager form of government. Municipalities and Regional Government. [Local Approval Received.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act establishing a town manager form of government for 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. CONTINUATION OF EXISTING GOVERNMENT

A. CONTINUATION OF EXISTING LAWS, BY-LAWS, PERSONNEL, ETC.

All special acts, by-laws, rules and regulations which are in force on the effective date of this Act that are not inconsistent with the provisions of this Act shall continue in full force until amended or repealed.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 that are not inconsistent with this Act, in force on the effective date of this Act and are given to the respective boards, officers and agencies by law, this Act, town by-law or by vote of town meeting. If any provision of this Act conflicts with any provisions of any state or federal law or regulation, the federal law or regulations shall govern.

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

13 B. CONTINUATION OF PERSONNEL, CONTRACTS, TRANSFER OF RECORDS
14 AND PROPERTY

15 Any office or position in the administrative service of the town and incumbents in such
16 offices, on the effective date of this Act shall continue to function as they did previously until a
17 change in those offices, positions or incumbents is effected in accordance with the provisions of
18 this Act. No contracts, or liabilities in force on the effective date of this act shall be affected by
19 the acceptance of this act by the town, and any offices and/or departments created hereunder
20 shall in all respects be the lawful successor of offices and departments so abolished.

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

24 SECTION 2. BOARD OF SELECTMEN

25 A. COMPOSITION

26 There shall be a board of selectmen consisting of five (5) members elected for terms of
27 three years each, so arranged that the term of office of as nearly an equal number of members as
28 is possible shall expire each year.

29 B. VACANCY IN OFFICE

30 Vacancies in the office of selectmen shall be filled in accordance with the provisions of
31 Massachusetts General Laws.

32 C. EXECUTIVE POWERS

33 The executive powers of the town shall be vested in the board of selectmen which shall
34 serve as the chief policy-making body of the town.

35 1. The board of selectmen shall have all of the executive powers it is possible for a board
36 of selectmen to have and to exercise and shall be authorized to enter into intergovernmental
37 and/or public/private agreements on such terms it deems beneficial to the citizens of Pembroke.

38 2. The board of selectmen shall be responsible for the formulation and promulgation of
39 policy directives and guidelines to be followed by all town agencies serving under it, and in
40 conjunction with other elected town officers and multiple member bodies to develop and
41 promulgate policy guidelines designed to bring the operation of all town agencies into harmony,
42 provided however, nothing in this section shall be construed to authorize any member of the
43 board of selectmen, nor a majority of such members, to become involved in the day-to-day
44 administration of any town agency. It is the intention of this provision that the board of
45 selectmen shall act only through the adoption of broad policy guidelines, which are to be
46 implemented by officers and employees serving under it.

47 3. The board of selectmen shall cause the by-laws, and rules and regulations for the
48 government of the town to be enforced and shall cause an up-to-date record of all its official acts
49 to be kept.

50 4. The board of selectmen shall appoint the town manager, town counsel, and shall
51 approve the selection of the town audit firm.

52 5. The board of selectmen shall be the licensing board of the town and shall have the
53 power to issue licenses, to make all necessary rules and regulations regarding the issuance of
54 such licenses, and to attach such conditions and restrictions thereto as it deems to be in the public
55 interest. The board of selectmen shall enforce the laws relating to all businesses for which it
56 issues such licenses. The board of selectmen under this Act may delegate or reorganize any local
57 licensing authority or process notwithstanding any general laws relating to local governance to
58 the contrary.

59 6. The board of selectmen shall be responsible to provide for timely audits as required by
60 law. The audits shall be made by a certified public accountant, or firm of such accountants, who
61 have no personal interests, direct or indirect, in the fiscal affairs of the town government or any
62 of its officers.

63 SECTION 3. TOWN MANAGER

64 A. APPOINTMENTS, QUALIFICATIONS, TERMS OF OFFICE AND
65 EMPLOYMENT

66 1. APPOINTMENT

67 There shall be established in the town of Pembroke the office of town manager. The town
68 manager shall be appointed by the board of selectmen for a term not to exceed three (3) years, as
69 the board may determine, and may be appointed for successive terms of office. The board of
70 selectmen shall create a search committee to assist in the selection of candidates for the position
71 of town manager. The committee shall be composed of two (2) selectmen, one (1) advisory
72 board member, and two (2) at large members from the general public.

73 2. QUALIFICATIONS

74 The town manager shall be a person of demonstrated ability with administrative
75 experience in public management or business administration and who is qualified by reason of
76 education and experience. The educational qualifications shall consist of at least a Bachelor's
77 Degree in public administration or related field, with a Master's Degree in Public Administration
78 or Business being highly desirable. The candidates shall be persons with executive and
79 administrative qualifications and especially fitted by education, training, and experience to
80 perform the duties of the office. The town may from time to time, by by-law, establish such
81 additional qualifications as seem necessary and appropriate.

82 3. TERMS OF OFFICE

83 The town manager shall devote full time to the duties of said office and shall not engage
84 in any other business or occupation during the term of his or her employment by the town. The
85 town manager shall hold no elective office in the town during his or her tenure as town manager,
86 but the board of selectmen may appoint the town manager to any non-elective office or position
87 consistent with the responsibilities of the town manager, and such office or position shall be
88 deemed to be part of said town manager position. Before entering upon his or her duties, the
89 town manager shall be sworn to the faithful and impartial performance thereof by the town clerk.
90 The town manager shall not have served in an elected office for the town of Pembroke for at
91 least twenty-four months prior to his or her appointment.

92 4. TERMS OF EMPLOYMENT

93 a. ADDITIONAL QUALIFICATIONS

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

99 b. COMPENSATION

100 The board of selectmen shall set the compensation of the town manager, not to exceed the
101 amount appropriated by the town meeting.

102 SECTION 4. TOWN MANAGER - POWERS AND DUTIES

103 The town manager shall be the chief administrative executive officer of the town. The
104 town manager shall be responsible to the board of selectmen for the effective management of all
105 town affairs placed in the town manager's charge by this Act, the board of selectmen, or vote of
106 the town meeting. The town manager shall be responsible for the implementation of town
107 policies established by the board of selectmen. The functions and duties of the town manager
108 shall include, but not be limited to, the following:

109 A. POWERS OF APPOINTMENT

110 1. As provided for in this Act, appoint and remove all non-elected department heads, and
111 approve the appointment and removal of all other employees except employees of the school
112 department and the fire department provided, however, that the Library Director shall continue to
113 be appointed by the Library Trustees. The town manager shall consult with the appropriate
114 elected or appointed board, commission, committee, or official prior to department head

115 appointments or removals. Appointments to and removal from such department head positions
116 shall become effective on the twentieth day following the day notice of appointment or removal
117 is filed with the board of selectmen.

118 2. Department heads shall, subject to the consent and approval of the town manager,
119 appoint or remove assistant department heads, officers, subordinates and employees, including
120 employees serving under elected and appointed boards, commissions, committees and officials
121 for whom no other method of selection is provided in this Act, except employees of the school
122 department and fire department; provided however, that the department head shall consult with
123 the appropriate elected or appointed board, commission, committee or official prior to making
124 such appointments or removals.

125 3. All initial appointments shall be based on merit and fitness alone.

126 B. ADMINISTRATIVE DUTIES

127 1. Day-to-day supervision of all town departments and direction of the operations of the
128 town. This section shall not apply to employees of the school department or fire department and
129 to the statutory responsibilities and functions of the school committee.

130 2. Supervise, direct and be responsible for the efficient administration of all officers
131 appointed by the town manager and their representative departments, and of all functions for
132 which the town manager is given responsibility, authority or control by this Act, by by-law, by
133 town meeting vote, or by vote of the board of selectmen.

134 3. Reorganize, consolidate or establish any department or position under the town
135 manager's direction or supervision, at his or her discretion. Transfer all or part of any

136 unexpended appropriation of a reorganized or consolidated department, board or office to any
137 other town department, board or office.

138 4. Administer, either directly or through a person appointed by him, all provisions of
139 general and special laws applicable to the town including Federal and Massachusetts Emergency
140 Management Agencies' requirements, and by-laws and votes of the town within the scope of his
141 or her duty, and all policy rules and regulations made by the board of selectmen.

142 5. Establish control and data systems appropriate to monitoring expenditures by town
143 boards and departments to enable the town manager to make periodic reports to the board of
144 selectmen and the Advisory Committee on the status of the town's finances.

145 6. Develop and administer a personnel system, including, but not limited to,
146 determination of rates of pay, the development and implementation of an ongoing training
147 program, evaluation process, personnel and hiring policies, practices, and regulations for town
148 employees.

149 7. Manage and be responsible for all town buildings, properties and facilities, except
150 those under the control of the school committee and conservation commission. The town
151 manager may direct the maintenance of school committee, open space committee and
152 conservation commission buildings, properties and facilities if and to the extent the school
153 committee, and conservation commission may request and authorize.

154 8. Attend and participate in all regular and special board of selectmen meetings and town
155 meetings, unless excused therefrom by the board of selectmen.

156 9. Cause full and complete records of meetings of the board of selectmen to be taken and
157 maintained and compile reports of the meetings as requested by the board of selectmen.

158 10. Act as the liaison with and represent the board of selectmen before state, federal and
159 regional authorities.

160 11. Subject to policy established by the board of selectmen, approve all warrants or
161 vouchers, including payroll warrants, for payment of town funds submitted by the town
162 accountant; provided, however, that in the event of a vacancy or unavailability of the town
163 manager, the board of selectmen may approve all warrants and vouchers. Any warrants
164 generated by the town manager shall be signed by the board of selectmen,

165 12. Approve all grants submitted on behalf of the town.

166 13. To prosecute, defend and compromise, subject to the approval of the board of
167 selectmen, all litigation to which the town is a party.

168 14. To inquire and make investigation, at any time, into the conduct and operation of
169 office or performance of duties of any officer or employee, department, board, commission or
170 other town agency.

171 15. To coordinate the activities of employees serving under the office of the town
172 manager and the office of the board of selectmen with those under the control of other officers
173 and multiple member bodies elected directly by the voters. For this purpose, the town manager
174 shall have authority to require the persons so elected, or their representatives, to meet with the
175 town manager, at reasonable times, for the purpose of effecting coordination and cooperation

176 among all agencies of the town. The town manager shall have the right to attend and speak at any
177 public meeting of any municipal member body.

178 16. Perform any other duties consistent with his or her office as may be required by by-
179 law, vote of the town or vote of the board of selectmen.

180 C. FINANCIAL POWERS AND DUTIES

181 1. BUDGET

182 a. Prepare and submit at a public meeting or meetings to the board of selectmen and
183 Advisory Committee not later than ninety (90) days prior to the annual town meeting a written
184 proposed balanced budget for town government, including the school department, for the ensuing
185 fiscal year.

186 b. The proposed budget shall detail all estimated revenues from all sources, and all
187 expenditures, including debt service for the previous, current and ensuing years.

188 c. It shall include proposed expenditures for both current operations and capital
189 expenditures during the ensuing year, together with estimated revenues and free cash available at
190 the close of the fiscal year, including estimated balances in special accounts.

191 d. The town may, by bylaw, establish additional financial reports to be provided by the
192 town manager.

193 e. To assist said town manager in preparing the proposed annual budget of revenues and
194 expenditures, all boards, officers, and committees of the town, including the school committee,
195 shall, within the timeframe requested by the town manager, furnish all relevant information in

196 their possession and submit to the town manager, in writing and in such form as the town
197 manager shall establish, a detailed estimate of the appropriations required and available funds.

198 2. COLLECTIVE BARGAINING

199 a. Negotiate collective bargaining contracts on behalf of the board of selectmen, which
200 contracts shall be subject to approval, ratification and execution by the board. The board of
201 selectmen may authorize use of additional counsel, as requested by the town manager, to assist
202 the town manager in the negotiations at its discretion.

203 b. Administer and enforce collective bargaining agreements, and personnel rules and
204 regulations, and by-laws adopted by the town.

205 3. PROCUREMENT

206 Act as the chief procurement officer under the provisions of Chapter 30B of the General
207 Laws, responsible for the purchasing of all supplies, materials, services and equipment for the
208 town, including the bidding and awarding, and executing of all contracts, except for the school
209 department. Specifications for equipment purchases are to be written by the appropriate
210 department heads in consultation with the Town Manager.

211 SECTION 5. TOWN MANAGER - VACANCY

212 A. PERMANENT VACANCY

213 The board of selectmen shall fill any permanent vacancy in the office of the town
214 manager as soon as feasible in accordance with Section 3 of this Act. In the event of a vacancy,
215 the board of selectmen shall, within a reasonable period of time, not to exceed fourteen (14)

216 days, appoint some other a capable person to temporarily perform the duties of the town manager
217 until a permanent replacement is appointed.

218 B. TEMPORARY ABSENCE OR DISABILITY

219 1. The town manager may designate by letter filed with the town clerk and board of
220 selectmen a capable officer of the town to perform the duties of town manager during a
221 temporary absence or disability.

222 2. If the absence or disability exceeds thirty (30) days, any designation by the town
223 manager shall be subject to approval by the board of selectmen. If the town manager fails to
224 make such a designation, or if the person so designated is unable to serve, the board of selectmen
225 may designate some other capable person to perform the duties of town manager.

226 3. Powers and Duties - The powers and duties of the acting town manager, under (a) and
227 (b) above, shall be limited to matters not permitting of delay and shall include authority to make
228 temporary, emergency appointments or designations to town office or employment, but not to
229 make permanent appointments or designations unless authorized by the board of selectmen.

230 SECTION 6. TOWN MANAGER – REMOVAL; SUSPENSION

231 The board of selectmen may terminate and remove or suspend the town manager with a
232 minimum of four (4) affirmative votes. Prior to any such termination, removal, or suspension
233 exceeding five (5) days, notice shall be given and reasons for the proposed action shall be
234 provided in writing to the town manager, and an opportunity shall be provided for the town
235 manager to meet with the board of selectmen and respond to those reasons. After such meeting,
236 if any, the board of selectmen may act by a minimum of four (4) affirmative votes of the board of

237 selectmen to terminate, remove or suspend for a period exceeding five (5) days the town
238 manager.

239 SECTION 7. DEPARTMENT OF PUBLIC WORKS

240 A. There shall be an elected Board of Commissioners for the Department of Public
241 Works, hereinafter in this section called the board, consisting of three (3) members serving three
242 year, staggered terms. The incumbent commissioners shall remain in office, subject to re-
243 election, as their terms expire.

244 B. The vote of the town at the 1991 town election regarding Article 67 is hereby
245 rescinded. As approved in Article 67 Section 4, a vote in the affirmative for the act creating the
246 Town Manager will also be considered a vote to revoke the 1991 Act.

247 C. There shall be a director of public works, appointed by the town manager. The
248 Director of Public Works and Town Manager shall consult with the Board for the purpose of
249 receiving advice and assistance in the development of policy guidelines for the operation of the
250 department of public works, and the Board shall perform such other advisory functions related to
251 the Department of Public Works as the Director of Public Works or Town Manager may request,
252 provided however, nothing in this section shall be construed to authorize any member of the
253 Board, nor a majority of such members, to become involved in the day-to-day administration of
254 the Director of Public Works.

255 D. Notwithstanding the above, the Board shall continue to function as a board of water
256 commissioners and in that capacity shall set water rates and maintain the water enterprise fund
257 and shall to continue to exercise all of the authority and shall continue to have all of the
258 responsibilities it had under Chapter 284 of the Acts of 1991.

259 SECTION 8. TRANSITION PROVISION

260 A. TOWN ADMINISTRATOR

261 The position of town administrator shall be abolished upon the assumption of office by
262 the town manager. Should the position become vacant prior to the town manager assuming the
263 duties of the office, the board of selectmen may appoint an acting town administrator to serve
264 until the assumption of the duties of office by the town manager.

265 B. DEPARTMENT OF PUBLIC WORKS

266 Chapter 284 of the Acts of 1991, establishing a department of public works in the town of
267 Pembroke, is hereby rescinded.

268 SECTION 9. EFFECTIVE DATE

269 This Act shall take effect upon its passage by the general court.