HOUSE DOCKET, NO. 4858 FILED ON: 5/29/2018

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:
Josh S. Cutler	*6th Plymouth*	*5/29/2018*
Viriato M. deMacedo	*Plymouth and Barnstable*	*5/29/2018*

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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of this Act that are not inconsistent with the provisions of this Act shall continue in full force until amended or repealed.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.

If any provision of this Act conflicts with any provisions of any special act, by-law, rule or regulation of the town, the provisions of 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 incumbents in such offices, on the effective date of this Act shall continue to function as they did previously until a change in those offices, positions or incumbents is effected in accordance with the provisions of 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 offices and/or departments created hereunder shall in all respects be the lawful successor of offices and departments so abolished.

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

SECTION 2. BOARD OF SELECTMEN

A. COMPOSITION

There shall be a board of selectmen consisting of five (5) members elected for terms of three years each, 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

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

C. EXECUTIVE POWERS

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

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

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

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

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

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

6. The board of selectmen shall be responsible to provide for timely audits as required by law. The audits shall be made by a certified public accountant, or firm of such accountants, who 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 EMPLOYMENT

1. APPOINTMENT

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

2. QUALIFICATIONS

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

3. TERMS OF OFFICE

The town manager shall devote full time to the duties of said office and shall not engage in any other business or occupation during the term of his or her employment by the town. The town manager shall hold no elective office in the town during his or her tenure as town manager, but the board of selectmen may appoint the town manager to any non-elective office or position consistent with the responsibilities of the town manager, and such office or position shall be deemed to be part of said town manager position. Before entering upon his or her duties, 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 of Pembroke for at least twenty-four months prior to his or her appointment.

4. TERMS OF EMPLOYMENT

a. ADDITIONAL QUALIFICATIONS

The board of selectmen 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 may 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.

b. COMPENSATION

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

SECTION 4. TOWN MANAGER - POWERS AND DUTIES

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

A. POWERS OF APPOINTMENT

1. As provided for in this Act, appoint and remove all non-elected department heads, and approve 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. The town manager shall consult with the appropriate elected or appointed board, commission, committee, or official prior to department head

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

2. Department heads shall, subject to the consent and approval of the town manager, appoint or 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; provided however, that the department head shall consult with the appropriate elected or appointed board, commission, committee or official prior to making such appointments or removals.

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

B. ADMINISTRATIVE DUTIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. FINANCIAL POWERS AND DUTIES

1. BUDGET

a. Prepare and submit at a public meeting or meetings to the board of selectmen and Advisory Committee not later than ninety (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.

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

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

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

e. To assist said town manager in preparing the proposed annual budget of revenues and expenditures, all boards, officers, and committees of the town, 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.

2. COLLECTIVE BARGAINING

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

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

3. PROCUREMENT

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

SECTION 5. TOWN MANAGER - VACANCY

A. PERMANENT VACANCY

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

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

B. TEMPORARY ABSENCE OR DISABILITY

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

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

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

SECTION 6. TOWN MANAGER – REMOVAL; SUSPENSION

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

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

SECTION 7. DEPARTMENT OF PUBLIC WORKS

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

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

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

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

SECTION 8. TRANSITION PROVISION

A. TOWN ADMINISTRATOR

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

B. DEPARTMENT OF PUBLIC WORKS

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

SECTION 9. EFFECTIVE DATE

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