HOUSE DOCKET, NO. 5214 FILED ON: 10/24/2018

HOUSE . . . . . No. 4952

The Commonwealth of Massachusetts

PRESENTED BY:

Harold P. Naughton, Jr.

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 Board of Selectmen-Town Administrator form of government for the town of Berlin.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Harold P. Naughton, Jr.	*12th Worcester*	*10/24/2018*
Dean A. Tran	*Worcester and Middlesex*	*10/29/2018*

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HOUSE . . . . . No. 4952

By Mr. Naughton of Clinton, a petition (accompanied by bill, House, No. 4952) of Harold P. Naughton, Jr., and Dean A. Tran (by vote of the town) that the town of Berlin be authorized to establish a board of selectmen-town administrator form of government in said town. 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 Board of Selectmen-Town Administrator form of government for the town of Berlin.

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. The Town of Berlin, hereafter referred to in this Act as "Town" shall be governed by this act. To the extent that this act conflicts with existing General Laws and special acts, this Act shall govern.

SECTION 2. The executive powers of the Town shall be vested in the Board of Selectmen, hereafter referred to in this Act as "Board", who shall have all the powers given to boards of selectmen by the General Laws, except as otherwise provided herein.

The Board shall serve as the chief goal-setting and policy-making agency of the Town. The duties and responsibilities for day-to-day management of the Town shall be delegated to the Town Administrator, hereafter referred to in this act as "Administrator." The Board shall act through the adoption of policy directives and guidelines, which shall be implemented by the Administrator and the officers and employees appointed by, or pursuant to the authority of, the

Board. Individual members of the Board shall not purport to represent the Board or exercise the authority of the Board, except when specifically authorized by the Board.

The Board shall:

(1) promulgate rules and regulations; and issue interpretations in order to implement policies and to carry out its responsibilities under state law, Town by-laws, and this Act;

(2) exercise, through the Administrator, general supervision over all matters affecting the interests or welfare of the Town;

(3) appoint the department heads, Town Counsel and joint appointments, except: (i) those positions elected by the voters, (ii) those positions appointed by elected officials, and (iii) those positions appointed by the Chief of the Fire & EMS Department of the Town; provided, that the Board may make appointments to temporary posts and committees the Board creates for special purposes; provided, further that the Board may make appointments for any position not otherwise referenced in this paragraph; and provided, further that the Board may appoint any open position in the Town, if the authorized appointing or hiring authority fails to fill a position within ninety (90) days of a vacancy;

(4) have general administrative oversight of such boards, committees and commissions appointed jointly or severally by the Board;

(5) serve as the licensing board and have responsibility over and authority for other quasi-judicial functions provided by the General Laws and the Town By-Laws;

(6) issue all Town Meeting warrants;

(7) review the annual proposed budget submitted by the Administrator, make recommendations with respect to the annual proposed budget as the Board deems advisable and present the budget and recommendations to the Finance Committee of the Town for its review and recommendations;

(8) appoint an Administrator who shall: (i) be a person with the executive and administrative qualifications, especially fitted by education, training and experience, to perform the duties of the office; and (ii) not have served in an elective office in the Town for at least twelve (12) months prior to appointment; provided, that the Board may establish such additional qualifications as it deems necessary and appropriate; provided, further that the identification and screening of appropriate candidates shall be coordinated by a hiring committee that includes both employees and residents of the Town; provided, further that the Administrator shall not be required to be a resident of the Town or the Commonwealth at the time of appointment, nor at any time during the period of such service; provided further, that the Administrator shall not be subject to the Personnel By-Law of the Town, except as referenced in the Administrator's employment contract; and provided further, that the Board may reappoint the Administrator;

(9) enter into an employment contract for a term of not more than three (3) years with an Administrator for salary, fringe benefits and other conditions of employment, including but not limited to: severance pay, reimbursement for expenses incurred in the performance of the Administrator's duties, liability insurance, conditions of discipline, termination, dismissal and reappointment, performance standards and leave;

(10) set the compensation for the Administrator; provided, however that the compensation set by the Board shall not exceed an amount appropriated by the Town Meeting;

(11) designate a qualified person in the event of a temporary absence of the Administrator for longer than twenty (20) working days, or in lieu of an appointee under Section 4.23, or in the event of a vacancy in the position, to serve as Interim Administrator, provided that the appointment of an acting Administrator shall be for a period not to exceed one hundred and eighty (180) days, but one renewal may be voted by the Board not to exceed a second six (6) month period, and further provided compensation for such person shall be set by the Board, and

(12) suspend or remove the Administrator, by a majority vote of the Board, at any time, for cause following a formal procedure, including: (i) a written intent to suspend or dismiss, (ii) a written response and (iii) a public hearing; provided, that the public hearing shall be completed within thirty (30) days after the issuance of a written intent to suspend or dismiss, in accordance with the terms of the Administrator's contract.

SECTION 3. The Administrator shall be the chief administrative officer and chief financial officer of the Town and shall act as the agent for the Board. The Administrator shall be responsible to the Board for coordinating and administering all Town affairs under the jurisdiction of the Board, and all functions and activities for which the Office of Town Administrator is given authority, responsibility or control by this special act, by-law, town meeting vote, vote of the Board or otherwise. The Administrator's powers and duties shall include those outlined in Sections 4 to 7, inclusive.

SECTION 4. The Administrator shall supervise, manage and coordinate the day-to-day activities of all Town departments and employees under the jurisdiction of the Board and coordinate all activities of said departments with the activities of other departments under the jurisdiction of other elected officials, boards and commissions. The Administrator shall:

(1) consult and advise the Board regarding the Board's policies and implement those policies;

(2) advise the Board as to the needs of the Town and recommend to the Board, other elected Town officers and agencies such measures requiring action by said Board, other elected Town officers and agencies or by the Town Meeting as the Administrator may deem necessary or expedient. The Administrator shall keep the Board informed on issues affecting the administration and governance of the Town, in a timely manner;

(3) attend all meetings of the Board, except when excused by the Board chair, provided however that the absence of the Administrator shall in no way prevent the Board from meeting, and consult with and advise the Board on all matters that come before the Board;

(4) attend all Town Meetings and advise the Town Meeting on all warrant articles within the jurisdiction of the Board or the Administrator;

(5) attend Finance Committee meetings as necessary and keep the Finance Committee informed on all matters under the jurisdiction of the Administrator that come before the committee;

(6) manage, supervise and be responsible for the efficient administration of all departments, commissions, boards and offices under the jurisdiction of the Board; provided, however, that the Administrator shall not exercise any control over the discretionary power vested by statute in any such board, committee, commission or officer;

(7) supervise and direct the activities of the Town's departments, boards, commissions and officers under the jurisdiction of the Board on the effective date of this Act and other

departments, as may be assigned by general by-laws of the Town or any general or special law, including this Act; provided, that for this purpose, the Administrator shall have authority to require the persons so elected, or their representatives, to meet with the Administrator, at reasonable times, for the purpose of effecting coordination and cooperation among all agencies of the Town; provided, further that the Administrator shall have the right to attend and speak at any meeting of any multiple member body;

(8) reorganize, abolish, consolidate or establish a department or position under the Administrator's authority for more efficient use of Town resources, as the Administrator deems appropriate, subject to the approval of the Board before implementation, and to additional funding by Town Meeting as necessary;

(9) act as chief procurement officer for the Town, in accordance with Chapter 30B of the General Laws, and appoint such assistant procurement officers as provided in said Chapter 30B; establish and enforce procurement policies and guidelines in accordance with applicable state laws; be responsible for purchasing all supplies, materials, services and equipment for the departments under the jurisdiction of the Board; have the authority to award and sign contracts that do not exceed fifty thousand dollars ($50,000.00), commonwealth highway contracts, and state and federal grants; provided, that a contract that exceeds fifty thousand dollars ($50,000.00) shall require the approval of the Board; provided further, that the Administrator shall have the authority to sign a contract approved by the Board on behalf of the Town; and provided further, that contracts and grants signed by the Administrator shall be promptly reported, in writing, to the Board;

(10) keep a full and complete inventory of all Town property, both real and personal;

(11) administer the Town's insurance policies, including claims settlement; provided, however, that all insurance contracts and claims settlements shall receive the approval of the Board;

(12) manage and oversee the use, maintenance, repair, security and, with the approval of the Board, regulate the rental for all the Town land and buildings that fall under the jurisdiction of the Board, except for schools, libraries and lands held for conservation purposes; provided, that other municipal boards may request that the Administrator coordinate the maintenance and repair of the land and buildings under their jurisdiction;

(13) work with Town Counsel, with the approval of the Board, to prosecute, defend and settle all litigation for or against the Town, subject to such appropriation as may be necessary to effect settlement, except litigation involving only the school department or its officers and employees;

(14) delegate, authorize or direct any employee appointed under the jurisdiction of the Board to exercise any power, duty or responsibility which the Administrator is authorized to exercise;

(15) be responsible for coordination of operational and strategic planning for the Town;

(16) keep complete records of the office of the Administrator and annually submit a full report of the operations of the office to the Board, unless requested to do so more frequently by the Board;

(17) respond to and coordinate local response to emergency situations in conjunction with public safety officers;

(18) establish and maintain positive community relations with local organizations, groups and residents and act as Town liaison with local, state, and federal agencies;

(19) receive and act on questions and complaints filed with the Board or the Administrator and inform the Board of the status of the resolution as appropriate;

(20) serve as the Board's public relations officer, including the preparation of news releases and acting as the Board’s spokesperson when so authorized;

(21) prepare for the Board’s review and approval the warrants for all town meetings, in conjunction with Town Counsel as necessary, including any related ballot questions, to ensure that they are proper and legal and that there are sufficient funds available for implementation;

(22) perform any other duties or tasks assigned by the Board, assigned by the Town Meeting or mandated by applicable general or special law; and

(23) designate, during a temporary absence, with the approval of the Board, a qualified administrative employee or officer, except a Board member, the Town Moderator, a member of the School Committee or a member of the Finance Committee, to exercise the powers and perform the duties of the Administrator for not more than twenty (20) working days, provided that the delegation shall be made in writing and shall be filed with the Town Clerk and the Board, provided further that the powers and duties of this temporary or acting administrator shall be limited to exercising the authority of the Administrator with respect to matters not admitting of delay including making temporary, emergency appointments or designations to Town office or employment but not to make permanent appointments or designations.

SECTION 5. The Administrator shall exercise overall responsibility for human resources for the Town including, but not limited to: authority for hiring, supervision, evaluation, discipline and removal of Town employees under the jurisdiction of the Board. The Administrator shall:

(1) assist the Personnel Committee in the implementation and administration of the Personnel By-Laws of the Town and salary and classification plan;

(2) coordinate the recruitment and screening of suitable candidates for consideration and appointment as department heads by vote of the Board; provided, that the Administrator shall provide the Board with relevant material for the evaluation of not more than five (5) candidates; provided further, that if the Board does not appoint any of the candidates, the Administrator shall continue to present candidates until a candidate is appointed; and provided further, that any department head may be removed by vote of the Board after consultation with the Administrator;

(3) appoint and remove individuals under the jurisdiction of the Board except for department heads and Town Counsel, and except as may otherwise be provided by law; provided, that the Administrator shall consult appropriately prior to appointing and provide notice to the Board of the anticipated appointment and the terms and conditions of employment for the appointment which the Board shall approve or disapprove within fourteen (14) days of the notice; provided, further, that a failure of the Board to act within the fourteen (14) day period shall be deemed approval of the appointment and the terms and conditions thereof; and provided further, that the termination or removal of positions so appointed shall be subject to the same appointment notice and approval requirements;

(4) assist all other hiring authorities in search, selection, and hiring processes for their direct reports;

(5) recommend individuals to the Board for appointment to any open position in the Town, if the authorized appointing or hiring authority fails to fill a position within ninety (90) days of vacancy;

(6) be responsible for the supervision, management, evaluation and discipline of the other Town employees under the jurisdiction of the Board, the annual performance evaluations of the department heads and shall oversee the performance evaluation program conducted by the department heads for employees within their respective departments;

(7) act on behalf of the Board in the grievance process pursuant to collective bargaining agreements; provided that the Board may provide advice and guidelines to the Administrator;

(8) administer the Personnel By-Law and collective bargaining agreements entered into by the Town and work with the Personnel Committee to develop and implement personnel policies and procedures for all Town employees, except the school department; provided, that with respect to the Fire and EMS Department, the authority granted to the Administrator in this clause shall be subject to Section 42 of Chapter 48 of the General Laws;

(9) negotiate all collective bargaining agreements on behalf of the Town, except the school department, with the approval of the Board; provided, that the Administrator may seek the assistance of counsel if the Administrator deems it necessary to effect successful negotiations; and provided further, that all final agreements shall be approved and executed by the Board;

(10) establish compensation packages for all Town employees under the jurisdiction of the Administrator who are not subject to a collective bargaining agreement with the approval of the Board and in conjunction with the Personnel Committee; provided, that such compensation shall not exceed the amount appropriated by Town Meeting and shall be subject to all applicable laws and by-laws; and

(11) have the power 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.

SECTION 6. The Administrator shall have the budgetary powers and responsibilities to:

(1) establish dates by which the proposed budget, revenue statement and tax rate estimate are to be submitted to the Board;

(2) prepare and present annually to the Board detailed budgetary estimates of amounts necessary for the administration of all Town boards, officers, committees, divisions and departments in the ensuing fiscal year, including both capital and operating items, and upon approval by the Board the Administrator shall present a requested proposed budget to the Finance Committee;

(3) report on the probable amount required to be levied and raised by taxation to defray all expenses and liabilities of the Town together with an estimate of the necessary tax rate;

(4) submit annually to the Board a five (5) year capital improvements program, or the same as approved by a formal Capital Planning Committee, including: (i) a list of all capital improvements and supporting data proposed to be undertaken during the next five (5) years; (ii)

cost estimates, methods of financing and recommended time schedule; and (iii) the estimated annual cost of operating and maintaining any facility to be constructed or acquired;

(5) ensure that all operating and capital budgets under the direct control of the Administrator are expended consistent with the relevant Town Meeting appropriation therefor; and coordinate with the governing bodies of departments not under the direct supervision of the Administrator to similarly ensure that their budgets are being expended consistent with law;

(6) approve all payroll and expense warrants for payment of town funds prepared by the town accountant in accordance with Section 56 of Chapter 41 of the General Laws, and advise the board of the same; in the event of a temporary absence of the administrator, the board shall approve such warrants;

(7) seek out, prepare, coordinate and file applications for state, federal and private grants; and

(8) ensure that the complete and full records of the financial activity of the Town are maintained in accordance with state, federal laws and the Town by-laws and render quarterly reports to the Board, unless requested more frequently.

SECTION 7. The Administrator shall have access to all municipal books, papers and documents or information necessary for the proper performance of the duties of the Administrator. The Administrator may, without notice, cause the affairs of any division or department under the Administrator's supervision, or the conduct of any officer or employee thereof, to be examined.

SECTION 8. All laws, by-laws, votes, rules and regulations, whether enacted by authority of the Town or any other authority, that are in force in the Town on the effective date of this Act and are not inconsistent with this act shall continue in full force and effect.

SECTION 9. No existing contract, action at law, suit in equity or other proceeding pending on the effective date of this act shall be affected by this Act.

SECTION 10. This Act shall not impair the rights or obligations of any person holding a Town office or employed by the Town on its effective date, except those duties assigned by this Act to another officer or employer those duties that are subsequently assigned to another officer or employee pursuant to this act. No person who continues in the permanent full-time service or employment of the Town shall forfeit their pay, grade or time in service as a result of this Act.

SECTION 11. This act shall take effect upon its passage.