

SENATE No. 1201

The Commonwealth of Massachusetts

PRESENTED BY:

Bruce E. Tarr

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 selectmen-administrator form of government for the town of Newbury.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

Bruce E. Tarr

First Essex and Middlesex

Lenny Mirra

2nd Essex

SENATE No. 1201

By Mr. Tarr, a petition (accompanied by bill, Senate, No. 1201) of Bruce E. Tarr and Lenny Mirra (by vote of the town) for legislation to establish a selectmen-administrator form of government for the town of Newbury. Municipalities and Regional Government. [Local Approval Received.]

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 2675 OF 2017-2018.]

The Commonwealth of Massachusetts

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**In the One Hundred and Ninety-First General Court
(2019-2020)**
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An Act establishing a selectmen-administrator form of government for the town of Newbury.

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. Upon the effective date of this act, the town of Newbury shall be governed
2 by this act. To the extent that this act modifies or repeals existing General Laws and special acts
3 or that body of law which constitutes the town charter under Section 9 of Article LXXXIX of the
4 Amendments to the Constitution of the Commonwealth, this act shall govern.

5 SECTION 2. The administration of all of the fiscal, prudential, and municipal affairs of
6 the town shall remain vested in the executive branch headed by the board of selectmen and the
7 legislative powers of the town shall remain vested in a town meeting open to all voters.

8 SECTION 3. The board of selectmen shall appoint the chief of police and all other police
9 officers, the town counsel, the administrative assistant to the selectmen, the members of the

10 human resources board, the members of the zoning board of appeals, the members of the finance
11 committee, 2 members of the capital planning committee, the fire chief, and all the members of
12 other appointed boards, committees, and commissions except as may be otherwise specified in
13 this act.

14 SECTION 4. The regional school committee members shall continue to be elected in
15 conformity with the votes of the regional school district All powers, rights and duties, now or
16 hereafter conferred or imposed by law upon the regional school committee, shall be exercised
17 and performed by the regional school committee. This act shall not be construed to affect the
18 powers and duties of the regional school committee as provided by law.

19 SECTION 5. A member of the board of selectmen, or of the regional school committee,
20 or of the finance committee, during the term for which the member was elected or appointed,
21 shall be ineligible either by election or appointment to hold any other town office. Any other
22 person appointed by the selectmen or town administrator to a town office under this act or of any
23 general or special law shall be eligible during the term of said office to appointment to any other
24 town office, except that the town accountant shall not be eligible to hold the position of town
25 treasurer or the position of town collector. The town administrator, subject to applicable General
26 Laws relating thereto, may assume the duties of an office which he is authorized to fill by
27 appointment.

28 SECTION 6. The selectmen elected as provided herein shall appoint, as soon as
29 practicable, for a definite term to be set by the selectmen, a town administrator who shall be a
30 person especially fitted by education, training, and experience, to perform the duties of the
31 office. The town administrator shall be appointed without regard to political affiliations or

32 beliefs. The town administrator need not be a resident of the town or of the commonwealth, shall
33 possess a college degree at the bachelor level and shall have 3 years of full-time paid experience
34 in a supervisory administrative position. A master's degree may substitute for not more than 1
35 year of such paid experience. The town administrator shall execute a bond in favor of the town
36 for the faithful performance of the duties of the office in a sum and with such surety or sureties
37 as fixed or approved by the selectmen, the cost of which shall be paid by the town. The
38 selectmen shall enter into a formal contract with the town administrator and establish a
39 compensation and benefits package which may take precedence over any personnel by-laws.

40 SECTION 7. A vacancy in the office of town administrator shall be filled as soon as
41 possible by the selectmen. Pending the appointment of a town administrator or filling of a
42 vacancy, the selectmen shall, within 7 days, appoint a suitable person to perform the duties of the
43 office.

44 SECTION 8. The town administrator may designate, subject to approval by the board of
45 selectmen, by letter filed with the town clerk, a qualified officer of the town to perform the duties
46 of the office during a temporary absence or disability of the town administrator. In the event of
47 failure of the town administrator to make that designation, the selectmen may, by resolution,
48 designate an officer of the town to perform the duties of the office until the town administrator
49 shall return or the disability shall cease.

50 SECTION 9. During any term of appointment of the administrator, the board of
51 selectmen may, under the terms and conditions of the contract entered into between the town and
52 the administrator as set forth in section 6, remove the administrator for good cause. In the event
53 of such removal, the administrator shall receive a severance pay in the amount equal to 1 month

54 of pay for each full year of service to the town, but in no event more than an amount equal to 3
55 months' pay.

56 SECTION 10. The town administrator shall receive such compensation for services as the
57 board of selectmen shall determine, but the compensation shall not exceed the amount
58 appropriated therefore by the town.

59 SECTION 11. In addition to specific powers and duties provided in this act, the town
60 administrator shall have the general powers and duties enumerated in this section as follows:

61 (1) The town administrator shall supervise the heads of all departments and shall
62 supervise and direct the general administration of all commissions, boards, and offices, except
63 the board of selectmen, the regional school committee, the planning board, the board of health,
64 the board of assessors, the finance committee, the library trustees, the town counsel, and the
65 moderator. The town administrator shall not exercise any control over the discretionary power
66 vested by statute in any such board, committee, commission, or office.

67 (2) The town administrator, in accordance with this act and with the approval of the board
68 of selectmen, except as otherwise expressly prohibited by the General Laws, may reorganize,
69 consolidate, or abolish departments, commissions, boards, or offices under his direction and
70 supervision, in whole or in part, and may establish such new departments, commissions, boards,
71 or offices as the town administrator considers necessary and may transfer the powers and duties
72 of one department, commission, board, or office to another.

73 (3) The town administrator shall approve, upon the recommendation of department heads,
74 the appointment and removal of all officers and employees of the town. Department heads shall
75 select, on merit and fitness alone, all department employees for such recommendation. The town

76 administrator shall appoint on merit and fitness alone, and may remove, all officers and
77 employees of the town who are not otherwise appointed or elected under this act.

78 (4) The town administrator shall attend all regular meetings of the board of selectmen.

79 (5) The town administrator shall keep full and complete records of the office, and shall
80 render as often as may be required by the selectmen, but, in any case, annually, a full report of all
81 operations during the period reported on.

82 (6) The town administrator shall keep the selectmen fully advised as to the needs of the
83 town and shall recommend to the selectmen for adoption measures requiring action by them or
84 by the town as the town administrator considers necessary or expedient.

85 (7) The town administrator shall have jurisdiction over the rental and use of town
86 property and shall be responsible for the maintenance and repair of town buildings. The town
87 administrator shall be responsible for the preparation of plans and the supervision of work on
88 existing town buildings and on the construction of new town buildings.

89 (8) The town administrator shall appoint the chief procurement officer of the town who
90 shall be responsible for the purchase of all supplies and materials and equipment, except books
91 and educational materials for schools and books and other media for libraries, and shall approve
92 the awards of all contracts for all departments of the town. The chief procurement officer may
93 hold other positions with the town consistent with the officer's role hereunder.

94 (9) The town administrator shall administer, either directly or through a person appointed
95 by the town administrator in accordance with this act, general and special laws applicable to the
96 town, all town by-laws and all regulations established by the selectmen.

97 (10) The town administrator shall have authority, with the approval of the board of
98 selectmen and the town counsel, to prosecute, defend and compromise all litigation to which the
99 town is a party, and shall be the executive officer of a public employer in the town as referred to
100 in chapter 258 of the General Laws pertaining to the processing of claims against the town.

101 (11) The town administrator shall be the selectmen's agent for collective bargaining and
102 may request the town counsel to assist in the performance of these duties.

103 (12) The town administrator shall secure on or before December first of each year from
104 all offices, boards, and committees charged with equipment, a list of the equipment upon forms
105 approved by the finance committee. The lists shall be filed with the town accountant who shall
106 transmit them to the clerk of the finance committee.

107 (13) The town administrator shall attend town meetings and shall be permitted to speak
108 when recognized by the moderator.

109 (14) The town administrator shall be responsible for the implementation of town meeting
110 votes and shall report annually in writing to the town meeting on the status of prior town meeting
111 votes on which implementation is not complete.

112 (15) The town administrator shall be accessible and available during regular office hours
113 for consultation to chairpersons of boards, committees, and commissions of the town, whether
114 appointed or elected, and shall make accessible and available to them data and records of the
115 office of town administrator as may be requested in connection with their official duties.

116 (16) The town administrator shall perform such duties, consistent with the office, as may
117 be required by the by-laws of the town or by vote of selectmen or town meeting.

118 SECTION 12. The town administrator may, without notice, cause the affairs of any
119 division or department under his or her supervision, or the job-related conduct of any officer or
120 employee thereof, to be examined. The town administrator shall have access to all town books
121 and papers for information necessary for the proper performance of the town administrator's
122 duties. The town administrator shall promptly transmit any findings of wrongdoing to the board
123 of selectmen.

124 SECTION 13. The town administrator shall appoint, with the approval of the board of
125 selectmen, the town treasurer, the tax collector, the town accountant, the building inspector and
126 assistant building inspector, the conservation agent, the public works director, the harbormaster,
127 the town planner, the director of veterans' affairs, the assistant town accountant, the
128 administrative assistant, the IT/communications program manager, the production/operations
129 specialist, the principal assessor, and the assistant assessor. The town administrator shall appoint,
130 and may remove subject to the approval of the board of selectmen, department heads, officers,
131 and subordinates and employees for whom no other method of appointment is provided in this
132 act, except the assistant town clerk, who shall be appointed by the town clerk, and persons
133 serving under other elected agencies and appointments made by representatives of the
134 commonwealth. Appointments to the permanent positions made by the town administrator shall
135 become effective on the fifteenth day following the day notice of appointment is filed with the
136 board of selectmen, unless the board of selectmen shall, within that period, by a majority vote of
137 the full board, vote to reject any such appointment.

138 SECTION 14. The registered voters of the town of Newbury shall, in accordance with
139 applicable laws, town by-laws, and votes of the town, continue to elect the following:

- 140 (1) moderator;
- 141 (2) members of the board of selectmen;
- 142 (3) regional school committee members;
- 143 (4) members of the planning board;
- 144 (5) members of the board of health;
- 145 (6) library trustees;
- 146 (7) town clerk;
- 147 (8) constables;
- 148 (9) fish commissioners;
- 149 (10) trustees of the First Settlers Burial Ground;
- 150 (11) tree warden; and
- 151 (12) members of the board of assessors.

152 This act shall not affect the term of office of an elected official or elected member of a
153 board, committee or authority. Every other elective office, board, committee, or commission of
154 the town shall be terminated or shall become appointive as provided herein, any other law to the
155 contrary notwithstanding. The term of office of a person elected to an office, board, committee,
156 or commission of the town, existing at the time of such acceptance and terminated hereunder,
157 shall continue until the appointment of the town administrator, and thereafter the offices, boards,
158 committees, and commissions shall be abolished, and all powers, duties and obligations

159 conferred or imposed thereon by law, except as provided by this act, shall be conferred and
160 imposed upon the town administrator to the extent hereinafter provided. The term of office of a
161 person elected to an office, board, committee, or commission, existing as an elected office on the
162 effective date of this act and having become appointive hereunder, shall continue until the term
163 for which that person was elected shall have expired, and until the appointment and qualification
164 of a successor. The powers, duties, and responsibilities of elected officials shall be as now or
165 hereafter provided by applicable General laws, special acts, town by-laws, and votes of the town,
166 except as otherwise expressly provided herein. Notwithstanding the election by the voters of the
167 town of the officers named in this section, those officers shall be available to the administrator
168 for consultation, conference and discussion on matters relating to their respective offices. The
169 town administrator may require those officials, except the selectmen, to prepare reports for the
170 town administrator necessary for the efficient administration of any of the fiscal responsibilities
171 of the office.

172 SECTION 15. At least 90 days before the annual town meeting, the town administrator
173 shall submit in writing to the board of selectmen a careful detailed estimate of the probable
174 expenditures of the town government for the ensuing fiscal year, stating the amount required to
175 meet the interest and maturing bonds and notes or other outstanding indebtedness of the town,
176 and showing specifically the amount necessary to be provided for each fund and department,
177 together with a statement of the expenditures of the town for the same purposes in the preceding
178 year and an estimate of the expenditures for the current year. The town administrator shall also
179 submit a statement showing all revenues received by the town in the preceding fiscal year
180 together with an estimate of the receipts of the current year and an estimate of the amount of
181 income from all sources of revenue exclusive of taxes upon property in the ensuing year. The

182 town administrator shall report the probable amount required to be levied and raised by the
183 taxation to defray all expenses and liabilities of the town, together with an estimate of the tax rate
184 necessary to raise that amount. For the purposes of enabling the town administrator to make up
185 the annual estimates of expenditures, all boards, offices, and committees of the town shall, at
186 least 120 days before the annual town meeting, furnish all information in their possession and
187 submit in writing to the town administrator a detailed estimate of the appropriations required for
188 the efficient and proper conduct of their respective departments during the next fiscal year.

189 SECTION 16. The board of selectmen shall consider the tentative budget submitted by
190 the town administrator and make recommendations relative thereto as it considers expedient and
191 proper in the interests of the town. On or before the seventy-fifth day before the annual town
192 meeting, the board of selectmen shall transmit a copy of the budget, together with its
193 recommendations relative thereto, to each member of the finance committee.

194 SECTION 17. The town administrator shall perform the duties of the town's director of
195 municipal finance and, as such, shall be the chief fiscal officer of the town. Warrants for the
196 payment of town funds prepared by the town accountant in accordance with section 56 of chapter
197 41 of the General Laws shall be submitted to the town administrator. The approval of warrants
198 by the town administrator shall be sufficient to authorize payment by the town treasurer, but in
199 the event of a vacancy in the office of town administrator the selectmen shall approve the
200 warrants.

201 SECTION 18. Laws, town by-laws, votes, rules, and regulations, whether enacted by the
202 authority of the town or by any other authority, which are in force in the town of Newbury on the
203 effective date of this act, or any portion or portions thereof, not inconsistent with this act, shall

204 continue in full force and effect until otherwise provided by other laws, town by-laws, votes,
205 rules, and regulations, respectively.

206 SECTION 19. A contract or an action at law or suit in equity, or other proceeding
207 existing or pending on the effective date of this act shall not be affected by this act.

208 SECTION 20. A person holding a town office or employment under the town shall retain
209 the office or employment and shall continue to perform the duties of the office or employment
210 until provisions have been made in accordance with this act for the performance of those duties
211 by another person or agency. A person who continues in the permanent full-time service or
212 employment of the town shall not forfeit pay grade or time in service.

213 SECTION 21. This act shall take effect upon its passage.