

HOUSE No. 4087

The Commonwealth of Massachusetts

PRESENTED BY:

Carmine Lawrence Gentile and Alice Hanlon Peisch

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 creating select board/town manager form of government in the town of Wayland.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|---------------------------------|---------------------------------------|------------------|
| <i>Carmine Lawrence Gentile</i> | <i>13th Middlesex</i> | <i>8/11/2021</i> |
| <i>Alice Hanlon Peisch</i> | <i>14th Norfolk</i> | <i>8/11/2021</i> |
| <i>Rebecca L. Rausch</i> | <i>Norfolk, Bristol and Middlesex</i> | <i>8/18/2021</i> |

HOUSE No. 4087

By Representatives Gentile of Sudbury and Peisch of Wellesley, a petition (accompanied by bill, House, No. 4087) of Carmine Lawrence Gentile, Alice Hanlon Peisch and Rebecca L. Rausch (by vote of the town) that the town of Wayland be authorized to create a select board and town manager form of government in said town. Municipalities and Regional Government. [Local Approval Received.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act creating select board/town manager form of government in the town of Wayland.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 § 1. The Select Board.

2 1.1 The Board of Selectmen in the Town of Wayland shall hereafter be known as the
3 Select Board, who shall be vested with all of the powers and duties conferred upon a board of
4 selectmen by any general or special law. All references to the Board of Selectmen contained in
5 the Town Code shall be construed as referring to the Select Board, and all powers and duties
6 conferred upon the Board of Selectmen by the Town Code shall be vested in the Select Board.

7 1.2 The Select Board shall be the chief executive officers of the Town and shall serve as
8 the chief policymaking body of the Town.

9 1.3 The Select Board shall consist of five (5) residents of the Town, elected by ballot, to
10 serve a term of three (3) years. The terms of the members of the Select Board shall be staggered

11 such that one (1) or two (2) members shall be elected each year. Upon the effective date of this
12 Act, the incumbent members of the Board of Selectmen shall continue in office for the duration
13 of their elected terms but shall be referred to as members of the Select Board.

14 1.4 The Select Board shall develop and promulgate policy directives and regulations that
15 shall be followed by all agencies serving under it and, in conjunction with other elected Town
16 officers and multiple-member bodies, shall develop and promulgate policies and regulations
17 designed to bring the operation of all town agencies into harmony; provided, however, nothing in
18 this section shall authorize any member of the Select Board or a majority of such members to
19 become involved in the day-to-day administration of a town agency nor shall this provision be
20 construed as conferring upon the Select Board any policy-making directives or regulations
21 specifically reserved to other Town boards or commissions by statute or Town Code.

22 1.5 The Select Board shall cause the Town Code, rules and regulations of the Town to be
23 enforced.

24 1.6 The Select Board shall appoint a Town Manager, Town Counsel, independent auditor
25 and any other boards, committees, and commissions according to Town Code, statute or any
26 special act. The Select Board shall also appoint any other multi-member boards for whom no
27 other method of appointment is provided by Town Code, statute or special act.

28 1.7 The Select Board shall have full authority as agents of the Town to employ counsel to
29 commence, prosecute and defend suits in the name of the Town, unless otherwise especially
30 ordered by vote of the Town. Said authority shall not extend to employing counsel to the School
31 Committee.

32 1.8 The Select Board shall cause an adequate supply of the full Town report to be
33 available in the Town offices and in the public library from which to furnish a copy to any
34 interested person, and it shall cause the warrant and Finance Committee's report with
35 recommendations to be served as provided in Section 36-2 of the Town Code.

36 1.9 The Select Board shall have the authority to declare a state of emergency in the Town
37 of Wayland upon the occurrence of any disaster, catastrophe, fire, flood, earthquake, storm,
38 public health emergency, other natural calamity, act of terrorism, or cyber attack. Any state of
39 emergency proclaimed by the Select Board shall, unless sooner terminated by proclamation of
40 the Select Board, terminate five days from the day it takes effect.

41 1.10 The Select Board shall have full authority to establish rules and regulations, binding
42 upon all boards, commissions, committees, councils, authorities, officials and employees of the
43 Town of Wayland, governing the use, marking, record-keeping, maintenance and reporting
44 requirements pertaining to Town-owned vehicles and reimbursement for the use of privately
45 owned vehicles by employees and officials while on Town business.

46 § 2. Appointment and qualifications of Town Manager.

47 2.1 The Select Board, by an affirmative vote of at least four (4) members, may appoint a
48 Town Manager for a term not to exceed three years, as the Select Board deems to be in the best
49 interests of the Town. The Town Manager shall receive such aggregate compensation and
50 benefits, not exceeding the amount appropriated, as the Select Board may determine. The Select
51 Board may, but is not required to, establish a written employment contract with the Town
52 Manager pursuant to Massachusetts General Laws Chapter 41, Section 108N, to provide for the

53 salary, fringe benefits, and other conditions of employment. The Town Manager position shall be
54 a non-union position.

55 2.2 The Town Manager shall be appointed on the basis of educational, management and
56 administrative qualifications and experience, including at least a bachelor's degree from an
57 accredited four-year college or university. The Town Manager shall have considerable
58 professional experience, consisting of compensated service in government administration or an
59 equivalent combination of education and business management experience.

60 2.3 The Town Manager shall devote full-time to the responsibilities of the office. The
61 Town Manager shall hold no elective Wayland Town office. The Town Manager may be
62 appointed by the Select Board to any other compatible Town office or position, but he/she shall
63 engage in no other business or occupation without advance written authorization by the Select
64 Board.

65 § 3. Authority and responsibilities of Town Manager.

66 3.1 Administrative Authority and Responsibilities

67 a. The Town Manager shall be the chief administrative and operating officer of the
68 Town.

69 b. The Town Manager shall be responsible for managing, supervising and executing all of
70 the activities noted in this Act, the Town Manager's job description, and any other duties
71 assigned to the Town Manager by the Select Board or in compliance with
72 federal and state law and the Town Code and Town policies.

73 c. The Town Manager will not set Town policy, but will ensure there is appropriate
74 coordination in the implementation of Town policy working across all Town departments in
75 conjunction with all elected and appointed boards and committees.

76 d. The Town Manager shall ensure that all Town employees, boards, commissions and
77 committees comply with the Town's financial, personnel and legal policies and procedures, as
78 well as all Town Meeting votes, Town Code, federal and state law, and all regulations

79 e. The Town Manager shall be responsible for the management of all financial,
80 administrative and operational affairs of the Town and Town departments and all boards,
81 commissions and committees but excluding the School Department, provided, however, that all
82 boards, commissions and committees shall continue to exercise permitting and/or policy-making
83 authority as provided in state law.

84 f. The Town Manager shall be responsible for overseeing, coordinating, and making
85 recommendations that may impact multiple Town boards and committees, broadly or in detail,
86 regarding Town financial, personnel and legal activities.

87 g. The Town Manager shall understand and have a working knowledge of the statutory
88 and regulatory authority and responsibility held by department heads and elected and appointed
89 boards, commissions and committees so s/he can effectively support these

90 officers in the execution of their duties. Unless expressly stated herein, nothing in this
91 Act is intended to reassign policy-making or permit granting statutory authority of any
92 department head or any elected or appointed board, commission or committee to the Town
93 Manager.

94 h. With respect to Town policies and programs that impact multiple areas of Town
95 government, the Town Manager shall work with all elected and appointed boards, commissions
96 and committees and Town department heads, be responsible for ensuring there is appropriate
97 administration and coordination both (i) in the implementation and on-going adherence to Town
98 policies; and (ii) in the
99 development and execution of such policies and programs.

100 i. With respect to the development, implementation and execution of policies and
101 programs affecting various Town departments, the Town Manager shall:

102 i) Coordinate the setting of priorities with the rest of the Town government;

103 ii) Communicate activities, including projects, plans and studies, so that
104 necessary input is received from all areas of Town government that should be
105 involved in those initiatives; and

106 iii) Coordinate efforts so that cross-functional services to residents and others are
107 effectively and consistently delivered.

108 j. With the exception of the School Department and Library, and except as otherwise
109 provided in the Town Code or Chapter 347 of the Acts of 2008, to streamline services, the Town
110 Manager may create a new department, may reorganize, eliminate or consolidate Town
111 departments or functions, in whole or in part, and may assign functions of one department to
112 another department, subject to the approval of the Select Board.

113 k. The Town Manager is designated as the Town's Records Access Officer under the
114 Public Records statute. The Town Manager shall, directly or through the Town's various
115 departments, boards, commissions and committees, be responsible for the preparation, filing and
116 maintenance of all records and reports on behalf of the Town.

117 l. The Town Manager oversees crisis intervention in emergency situations, working with
118 other key Town department heads, and addresses any systemic problems impacting multiple
119 areas of the Town as they arise. The Town Manager shall ensure priority items are properly
120 attended to and bring concerns about problem resolution to related boards, commissions and
121 committees, and ultimately, to the Select Board for assistance in resolution, if necessary.

122 3.2 Financial Authority and Responsibilities

123 a. The Town Manager shall be the chief financial officer of the Town.

124 b. The Town Manager shall initiate, draft and have general oversight of the process of
125 preparing the Town's annual operating and capital budgets for submission to the Finance
126 Committee. To assist the Town Manager in preparing the proposed annual operating and capital
127 budgets, all department heads, boards, commissions and committees of the Town, including the
128 School Department, shall furnish all relevant information and submit to the Town Manager, in
129 writing and in such form as the Town Manager shall prescribe, a detailed estimate of the
130 appropriations required and available funds.

131 c. The Town Manager shall draft and update a five-year capital improvement plan for all
132 Town departments for submission to the Finance Committee.

133 d. The Town Manager shall work with the Finance Director and Finance Committee to:

134 i) Develop long-term financial strategies addressing operational and capital financial
135 needs of the Town;

136 ii) Establish set budgetary guidelines to be used in the development of annual budgets;

137 iii) Review all operating and capital budgets of all Town departments and make
138 recommendations to the affected boards, commissions and committees and to the Finance
139 Committee about priorities important to budget development; and

140 iv) Evaluate actual expenditures and receipts against budgets and coordinate with
141 affected department heads, boards, commissions and committees the development of plans to
142 manage to the budget or obtain Finance Committee approval for Reserve Fund transfers, in
143 advance of spending, when possible.

144 e. The Town Manager shall serve as the Town's chief procurement officer pursuant to
145 state and federal law and shall ensure that all Town departments comply with applicable
146 procurement laws. The Town Manager may, in his or her discretion, delegate any
147 procurement responsibilities.

148 f. Unless any statute or special act provides to the contrary, the Town Manager is
149 authorized to execute all grant applications and shall award and execute all contracts binding the
150 Town up to a set amount to be established by policy set by the Select Board.

151 3.3 Personnel Authority and Responsibilities

152 a. Department Heads: Except as expressly provided herein, the Town Manager shall
153 appoint on the basis of merit and fitness alone, all department heads or similar positions, in
154 consultation with the respective boards, commissions and committees that the Department Heads

155 or similar positions support and in compliance with any applicable provision of a collective
156 bargaining agreement, with the exception of the School Department and Library.

157 b. Department Employees (subordinate to Department Head or similar position): The
158 Town Manager shall ultimately be responsible for appointing subordinates to Department Heads
159 or similar positions. Unless otherwise provided by the terms of an applicable collective
160 bargaining agreement, the Department Head or similar position may, with the consent of the
161 Town Manager or his or her designee, appoint on the basis of merit and fitness alone, all
162 subordinate employees of each Town department, with the exception of the School Department.

163 c. Unless otherwise provided under this Act, the Town Manager shall be responsible for
164 appointing all other appointed employees for whom no other method of appointment is provided
165 by the Town Code or other special act.

166 d. Discipline and Removal for Cause: The Town Manager may, for cause, discipline or
167 remove any department head or similar position, with the exception of the School Department
168 and Library Director, and shall, in consultation with the applicable

169 Department Head or similar position, discipline or remove all subordinate employees of
170 each Town department, with the exception of the School Department.

171 e. The Town Manager shall appoint, on the basis of merit and fitness alone, with
172 ratification by a vote of at least three members of the Select Board, and evaluate, discipline and,
173 for cause, remove, without the ratification of the Select Board:

174 i) A Police Chief;

175 ii) A Fire Chief;

176 iii) A Finance Director; and

177 iv) A Town Clerk.

178 f. In the event of a vacancy, disability or absence anticipated to be greater than thirty (30)
179 days of any department head or any position appointed by the Town Manager, the Town
180 Manager may appoint someone to serve in an acting or interim capacity for the period of such
181 vacancy, disability or absence.

182 g. Working with the Town's Human Resource Department, the Town Manager shall be
183 responsible for the daily administration of the Town-wide personnel system, including the
184 maintenance of personnel records and the enforcement of personnel policies, rules and
185 regulations and managing personnel costs to ensure maximum efficiency and fairness across
186 Town departments.

187 h. Evaluations: The Town Manager may develop a performance evaluation process and
188 establish performance standards not inconsistent with any terms of any collective bargaining
189 agreement. (new) The Town Manager shall be responsible for the annual

190 evaluation of job performance of all Town department heads, including the Town Clerk
191 and other positions appointed by the Town Manager but excluding the School Department and
192 Library Director, and shall incorporate any input or recommendations received from any elected
193 or appointed board, commission or committee served by such department heads. Evaluation of
194 the Library Director shall include input of the Town Manager. The Town Manager shall be
195 responsible for ensuring the completion of annual evaluations of the job performance of all
196 subordinate Town employees, excluding those of the School Department.

197 i. The Town Manager shall serve as the agent of the Select Board and negotiate collective
198 bargaining agreements on behalf of the Select Board in accordance with General Laws Chapter
199 150E, provided, however, that such agreements shall be subject to ratification by the Select
200 Board and subject to funding by Town Meeting. The Town Manager may designate appropriate
201 employees to assist with collective bargaining.

202 3.4 Facilities/Property Authority and Responsibilities

203 a. Except as otherwise provided in Chapter 347 of the Acts of 2008, the Town Manager
204 shall be responsible for the construction, reconstruction, restoration, rehabilitation, repair and
205 maintenance of all Town buildings and all Town real and personal property, and information
206 technology and infrastructure. Nothing in this provision shall be construed as conferring any
207 authority upon the Town Manager to have access to information that is otherwise unauthorized
208 under state law. (new)

209 b. The Town Manager shall, directly or through the Town's various departments, boards,
210 commissions and committees, maintain an inventory of all Town-owned real and personal
211 property.

212 3.5 Transitional Authority and Responsibilities

213 a. With the enactment of this Act by the General Court, Chapter 320 of the Acts of 2004,
214 An Act Relative to the Position of Town Administrator in the Town of Wayland, shall be
215 repealed and be of no effect, and the position of Town Administrator shall be abolished and the
216 incumbent thereof shall serve as the Acting Town Manager, or if there is no incumbent, the
217 Select Board shall appoint an Acting Town Manager. The Acting Town Manager shall serve
218 until the Select Board appoints a permanent Town Manager.

219 b. Following the enactment of this Act, the Select Board shall appoint a Town Manager,
220 and if the Select Board so chooses, the incumbent Town Administrator may be appointed Town
221 Manager on a permanent basis.

222 c. Following the enactment of this Act by the General Court, any reference to the Town
223 Administrator existing in any provision of the Town Code or any other special act shall be
224 construed as referring to the Town Manager. All powers and duties conferred upon the Town
225 Administrator by the Town Code or other special act shall be vested in the Town Manager,
226 unless otherwise provided in this Act.

227 d. Following the enactment of this Act by the General Court, Sections 58 and 60 of the
228 Town Code shall be repealed and be of no effect.

229 e. Following the enactment of this Act, all Town officers, boards, commissions and
230 employees shall continue to perform their duties in the same manner and to the same extent as
231 they have performed the same prior to the enactment of this Act, except that, upon the
232 appointment of a Town Manager, the powers and duties outlined herein shall be vested in the
233 Town Manager.

234 § 4. Removal of the Town Manager.

235 The Town Manager may be removed by an affirmative vote of at least four (4) members
236 of the Select Board in accordance with the provisions of the Town Manager's contract, if
237 applicable.

238 § 5. Acting Town Manager.

239 If the Town Manager shall be absent from his/her office for up to fourteen (14) days, the
240 Town Manager may designate a qualified person to serve as the Acting Town Manager and to
241 perform the duties of the Office of the Town Manager during this period of absence. In the event
242 the Town Manager shall be absent for more than fourteen (14) days or the office of Town
243 Manager shall be vacant for more than fourteen (14) days, the Select Board may appoint a
244 qualified person to serve as the Acting Town Manager and to perform the duties of the Office of
245 the Town Manager during the period of any vacancy caused by the Town Manager's absence,
246 illness, suspensions, removal or resignation. The appointment by the Select Board shall be for a
247 period not to exceed six months,

248 but such appointment may be extended by majority vote of the Select Board.

249 § 6. Town Clerk To Become Appointed Position.

250 6.1 Upon the effective date of this Act, the position of Town Clerk shall cease to be
251 elected and shall become a position appointed by the Town Manager pursuant to Sections 3.3.e
252 and 6 of this Act.

253 6.2 The incumbent in the office of Town Clerk shall continue to serve until the expiration
254 of the term for which elected as Town Clerk, and at the expiration of that term, a Town Clerk
255 shall be appointed by the Town Manager as provided in Section 3 of this Act. If the incumbent in
256 the office of Town Clerk vacates said office prior to the expiration of the term for which the
257 Town Clerk was elected, the office of Town Clerk shall cease to be an elected position and shall
258 be appointed by the Town Manager as provided in Section 3 of this Act.

259 § 7. Conflict with Other Acts or Town Code.

260 In the event that there is a conflict between any provision of this Act and any provision of
261 the Town Code, rules, regulations, orders, special acts, acceptances of laws, or other special act
262 pertaining to the Town of Wayland, this Act shall prevail. All other provisions of Town Code,
263 resolutions, rules, regulations and votes of the Town Meeting that are in force at the time this Act
264 is enacted, not

265 inconsistent with or superseded by the provisions of this Act, shall continue in full force
266 and effect until amended or repealed.

267 § 8. Time for Taking Effect.

268 This Act shall take effect upon its passage by the General Court.