

SENATE No. 1361

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 amending the Newbury general by-laws from board of selectmen to select board.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

Bruce E. Tarr

First Essex and Middlesex

Lenny Mirra

2nd Essex

SENATE No. 1361

By Mr. Tarr, a petition (accompanied by bill, Senate, No. 1361) of Bruce E. Tarr and Lenny Mirra (by vote of the town) for legislation to amend the Newbury general by-laws from board of selectmen to select board. Municipalities and Regional Government. [Local approval received]

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 2827 OF 2019-2020.]

The Commonwealth of Massachusetts

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

An Act amending the Newbury general by-laws from board of selectmen to select board.

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. Chapter 460 of the acts of 2008 is hereby amended by striking section 2 in
2 its entirety and inserting in place there of the following:- “The administration of all of the fiscal,
3 prudential, and municipal affairs of the town shall remain vested in the executive branch headed
4 by the select board and the legislative powers of the town shall remain vested in a town meeting
5 open to all voters.”

6 SECTION 2. Chapter 460 of the acts of 2008 is hereby amended by striking section 3 in
7 its entirety and inserting in place thereof the following:- The select board shall appoint the chief
8 of police and all other police officers, the town counsel, the administrative assistant to the select
9 board, the members of the personnel board, the members of the zoning board of appeals, the
10 members of the finance committee, 2 members of the capital planning committee, the board of

11 fire engineers, and all the members of other appointed boards, committees, and commissions
12 except as may be otherwise specified in this act.

13 SECTION 3. Chapter 460 of the acts of 2008 is hereby amended by striking section 5 in
14 its entirety and inserting in place thereof the following:- A member of the select board, or of the
15 regional school committee, or of the finance committee, during the term for which the member
16 was elected or appointed, shall be ineligible either by election or appointment to hold any other
17 town office. Any other person appointed by the select board or town administrator to a town
18 office under this act or of any general or special law shall be eligible during the term of said
19 office to appointment to any other town office, except that the town accountant shall not be
20 eligible to hold the position of town treasurer or the position of town collector. The town
21 administrator, subject to applicable General Laws relating thereto, may assume the duties of an
22 office which he is authorized to fill by appointment.

23 SECTION 4. Chapter 460 of the acts of 2008 is hereby amended by striking section 6 in
24 its entirety and inserting in place thereof the following:- The select board elected as provided
25 herein shall appoint, as soon as practicable, for a definite term to be set by the select board, a
26 town administrator who shall be a person especially fitted by education, training, and experience,
27 to perform the duties of the office. The town administrator shall be appointed without regard to
28 political affiliations or beliefs. The town administrator need not be a resident of the town or of
29 the commonwealth, shall possess a college degree at the bachelor level and shall have 3 years of
30 full-time paid experience in a supervisory administrative position. A master's degree may
31 substitute for not more than 1 year of such paid experience. The town administrator shall execute
32 a bond in favor of the town for the faithful performance of the duties of the office in a sum and
33 with such surety or sureties as fixed or approved by the select board, the cost of which shall be

34 paid by the town. The select board shall enter into a formal contract with the town administrator
35 and establish a compensation and benefits package which may take precedence over any
36 personnel by-laws.

37 SECTION 5. Chapter 460 of the acts of 2008 is hereby amended by striking section 7 in
38 its entirety and inserting in place thereof the following:- “A vacancy in the office of town
39 administrator shall be filled as soon as possible by the select board. Pending the appointment of a
40 town administrator or filling of a vacancy, the select board shall, within 7 days, appoint a
41 suitable person to perform the duties of the office.

42 SECTION 6. Chapter 460 of the acts of 2008 is hereby amended by striking section 8 in
43 its entirety and inserting in place thereof the following:- “SECTION 8. The town administrator
44 may designate, subject to approval by the select board, by letter filed with the town clerk, a
45 qualified officer of the town to perform the duties of the office during a temporary absence or
46 disability of the town administrator. In the event of failure of the town administrator to make that
47 designation, the select board may, by resolution, designate an officer of the town to perform the
48 duties of the office until the town administrator shall return or the disability shall cease.

49 SECTION 7. Chapter 460 of the acts of 2008 is hereby amended by striking section 9 in
50 its entirety and inserting in place thereof the following:- “SECTION 9. During any term of
51 appointment of the administrator, the select board may, under the terms and conditions of the
52 contract entered into between the town and the administrator as set forth in section 6, remove the
53 administrator for good cause. In the event of such removal, the administrator shall receive a
54 severance pay in the amount equal to 1 month of pay for each full year of service to the town, but
55 in no event more than an amount equal to 3 months’ pay. “

56 SECTION 8. Chapter 460 of the acts of 2008 is hereby amended by striking section 10 in
57 its entirety and inserting in place thereof the following:- “SECTION 10. The town administrator
58 shall receive such compensation for services as the select board shall determine, but the
59 compensation shall not exceed the amount appropriated therefore by the town”

60 SECTION 9. Chapter 460 of the acts of 2008 is hereby amended by striking section 11 in
61 its entirety and inserting in place thereof the following:- “SECTION 11. In addition to specific
62 powers and duties provided in this act, the town administrator shall have the general powers and
63 duties enumerated in this section as follows:

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

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

76 (3) The town administrator shall approve, upon the recommendation of department heads,
77 the appointment and removal of all officers and employees of the town. Department heads shall

78 select, on merit and fitness alone, all department employees for such recommendation. The town
79 administrator shall appoint on merit and fitness alone, and may remove, all officers and
80 employees of the town who are not otherwise appointed or elected under this act.

81 (4) The town administrator shall attend all regular meetings of the select board.

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

85 (6) The town administrator shall keep the select board fully advised as to the needs of the
86 town and shall recommend to the select board for adoption measures requiring action by them or
87 by the town as the town administrator considers necessary or expedient.

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

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

97 (9) The town administrator shall administer, either directly or through a person appointed
98 by the town administrator in accordance with this act, general and special laws applicable to the
99 town, all town by-laws and all regulations established by the select board.

100 (10) The town administrator shall have authority, with the approval of the select board
101 and the town counsel, to prosecute, defend and compromise all litigation to which the town is a
102 party, and shall be the executive officer of a public employer in the town as referred to in chapter
103 258 of the General Laws pertaining to the processing of claims against the town.

104 (11) The town administrator shall be the select board's agent for collective bargaining
105 and may request the town counsel to assist in the performance of these duties.

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

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

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

115 (15) The town administrator shall be accessible and available during regular office hours
116 for consultation to chairpersons of boards, committees, and commissions of the town, whether

117 appointed or elected, and shall make accessible and available to them data and records of the
118 office of town administrator as may be requested in connection with their official duties.

119 (16) The town administrator shall perform such duties, consistent with the office, as may
120 be required by the by-laws of the town or by vote of select board or town meeting.

121 SECTION 10. Chapter 460 of the acts of 2008 is hereby amended by striking section 12
122 in its entirety and inserting in place thereof the following:- “SECTION 12. The town
123 administrator may, without notice, cause the affairs of any division or department under his or
124 her supervision, or the job-related conduct of any officer or employee thereof, to be examined.
125 The town administrator shall have access to all town books and papers for information necessary
126 for the proper performance of the town administrator’s duties. The town administrator shall
127 promptly transmit any findings of wrongdoing to the select board.

128 SECTION 11. Chapter 460 of the acts of 2008 is hereby amended by striking section 13
129 in its entirety and inserting in place thereof the following:- “SECTION 13. The town
130 administrator shall appoint, with the approval of the select board, the town treasurer, the tax
131 collector, the town accountant, the building inspector and assistant building inspector, the
132 conservation agent, the highway superintendent, the harbormaster, the town planner, and the
133 director of veterans’ affairs. The town administrator shall appoint, and may remove subject to the
134 approval of the select board , department heads, officers, and subordinates and employees for
135 whom no other method of appointment is provided in this act, except the assistant town clerk,
136 who shall be appointed by the town clerk, and persons serving under other elected agencies and
137 appointments made by representatives of the commonwealth. Appointments to the permanent
138 positions made by the town administrator shall become effective on the fifteenth day following

139 the day notice of appointment is filed with the select board, unless the select board shall, within
140 that period, by a majority vote of the full board, vote to reject any such appointment.

141 SECTION 12. Chapter 460 of the acts of 2008 is hereby amended by striking section 14
142 in its entirety and inserting in place thereof the following:- “SECTION 14. The registered voters
143 of the town of Newbury shall, in accordance with applicable laws, town by-laws, and votes of
144 the town, continue to elect the following:

145 (1) moderator;

146 (2) members of the select board;

147 (3) regional school committee members;

148 (4) members of the planning board;

149 (5) members of the board of health;

150 (6) library trustees;

151 (7) town clerk;

152 (8) constables;

153 (9) fish commissioners;

154 (10) trustees of the First Settlers Burial Ground;

155 (11) tree warden; and

156 (12) members of the board of assessors.

157 This act shall not affect the term of office of an elected official or elected member of a
158 board, committee or authority. Every other elective office, board, committee, or commission of
159 the town shall be terminated or shall become appointive as provided herein, any other law to the
160 contrary notwithstanding. The term of office of a person elected to an office, board, committee,
161 or commission of the town, existing at the time of such acceptance and terminated hereunder,
162 shall continue until the appointment of the town administrator, and thereafter the offices, boards,
163 committees, and commissions shall be abolished, and all powers, duties and obligations
164 conferred or imposed thereon by law, except as provided by this act, shall be conferred and
165 imposed upon the town administrator to the extent hereinafter provided. The term of office of a
166 person elected to an office, board, committee, or commission, existing as an elected office on the
167 effective date of this act and having become appointive hereunder, shall continue until the term
168 for which that person was elected shall have expired, and until the appointment and qualification
169 of a successor. The powers, duties, and responsibilities of elected officials shall be as now or
170 hereafter provided by applicable General Laws, special acts, town by-laws, and votes of the
171 town, except as otherwise expressly provided herein. Notwithstanding the election by the voters
172 of the town of the officers named in this section, those officers shall be available to the
173 administrator for consultation, conference and discussion on matters relating to their respective
174 offices. The town administrator may require those officials, except the select board, to prepare
175 reports for the town administrator necessary for the efficient administration of any of the fiscal
176 responsibilities of the office.

177 SECTION 13. Chapter 460 of the acts of 2008 is hereby amended by striking section 15
178 in its entirety and inserting in place thereof the following:- “SECTION 15. At least 90 days
179 before the annual town meeting, the town administrator shall submit in writing to the select

180 board a careful detailed estimate of the probable expenditures of the town government for the
181 ensuing fiscal year, stating the amount required to meet the interest and maturing bonds and
182 notes or other outstanding indebtedness of the town, and showing specifically the amount
183 necessary to be provided for each fund and department, together with a statement of the
184 expenditures of the town for the same purposes in the preceding year and an estimate of the
185 expenditures for the current year. The town administrator shall also submit a statement showing
186 all revenues received by the town in the preceding fiscal year together with an estimate of the
187 receipts of the current year and an estimate of the amount of income from all sources of revenue
188 exclusive of taxes upon property in the ensuing year. The town administrator shall report the
189 probable amount required to be levied and raised by the taxation to defray all expenses and
190 liabilities of the town, together with an estimate of the tax rate necessary to raise that amount.
191 For the purposes of enabling the town administrator to make up the annual estimates of
192 expenditures, all boards, offices, and committees of the town shall, at least 120 days before the
193 annual town meeting, furnish all information in their possession and submit in writing to the
194 town administrator a detailed estimate of the appropriations required for the efficient and proper
195 conduct of their respective departments during the next fiscal year.

196 SECTION 14. Chapter 460 of the acts of 2008 is hereby amended by striking section 16
197 in its entirety and inserting in place thereof the following:- “SECTION 16. The select board shall
198 consider the tentative budget submitted by the town administrator and make recommendations
199 relative thereto as it considers expedient and proper in the interests of the town. On or before the
200 seventy-fifth day before the annual town meeting, the select board shall transmit a copy of the
201 budget, together with its recommendations relative thereto, to each member of the finance
202 committee.”

203 SECTION 15. Chapter 460 of the acts of 2008 is hereby amended by striking section 17
204 in its entirety and inserting in place thereof the following:- “SECTION 17. The town
205 administrator shall perform the duties of the town’s director of municipal finance and, as such,
206 shall be the chief fiscal officer of the town. Warrants for the payment of town funds prepared by
207 the town accountant in accordance with section 56 of chapter 41 of the General Laws shall be
208 submitted to the town administrator. The approval of warrants by the town administrator shall be
209 sufficient to authorize payment by the town treasurer, but in the event of a vacancy in the office
210 of town administrator the select board shall approve the warrants”.