

SENATE No. 01007

[LOCAL APPROVAL RECEIVED.]

The Commonwealth of Massachusetts

PRESENTED BY:

Stephen M. Brewer

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 passage of the accompanying bill:

An Act relative to the town charter for the town of Ashburnham.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

Stephen M. Brewer

Worcester, Hampden, Hampshire, Franklin

Richard Bastien

2nd Worcester

SENATE No. 01007

By Mr. Brewer, petition (accompanied by bill, Senate, No. 1007) of Stephen M. Brewer and Richard Bastien for legislation relative to the town charter for the town of Ashburnham [Local Approval Received] [Joint Committee on Municipalities and Regional Government].

The Commonwealth of Massachusetts

—————
In the Year Two Thousand Eleven
—————

An Act relative to the town charter for the town of Ashburnham.

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 Chapter 428 of the Acts of 1985 is hereby repealed.

2 SECTION 2. The following shall be the charter of the Town of Ashburnham:

3 Section 1. Upon the effective date of this act, the Town of Ashburnham shall be
4 governed by the provisions of this act. To the extent that the provisions of this act modify or
5 repeal existing general laws and special acts or that body of law which constitutes the town
6 charter under Section 9 of Article LXXXIX of the Amendments to the Constitution of the
7 Commonwealth, this act shall govern.

8 Section 2. The Board of Selectmen of said Town of Ashburnham shall appoint the Town
9 Accountant, the Historical Commission, the Arts Commission, the Constables, the Water
10 Commissioners, the Housing Authority and all other boards, committees and commissions
11 except those appointed by the Moderator or otherwise appointed in accordance with the

12 provisions of this act. The Moderator shall continue to appoint officials heretofore appointed by
13 the Moderator.

14 Section 3. 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. Nothing in this act shall be construed to
18 affect the powers and duties of the Regional School Committee as provided by law.

19 Section 4. A member of the Board of Selectmen, or of the Regional School Committee
20 or of the Advisory Board shall, during the term for which he was elected or appointed, be
21 ineligible either by election or appointment to hold any other Town office. Any person
22 appointed by the Town Administrator to any Town office under the provisions of this act or of
23 any general or special law shall be eligible during the term of said office to appointment to any
24 other Town office, except that the Town Accountant shall not be eligible to hold the position of
25 Town Treasurer or the position of Town Collector. The Town Administrator, subject to any
26 applicable provision of the General Laws relating thereto, may assume the duties of any office
27 which he is authorized to fill by appointment.

28 Section 5. 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 office.
31 The Town Administrator shall be appointed without regard to his political affiliations or beliefs.
32 He need not be a resident of the Town or of the Commonwealth when appointed, but shall
33 become a resident of the Town during the first year of his appointment unless otherwise provided

34 by the Selectmen. He shall possess a college degree at the bachelor level and shall have had
35 three years of full-time paid experience in a supervisory administrative position. A masters
36 degree may substitute for not more than one year of such paid experience. He shall execute a
37 bond in favor of the Town for the faithful performance of his duties in such sum and with such
38 surety or sureties as may be fixed or approved by the Selectmen, the cost for which shall be paid
39 by the Town. The Selectmen may enter into a formal contract with the Town Administrator and
40 may set a job description for the Town Administrator which shall take precedence over any
41 personnel by-laws.

42 Section 6. Any vacancy in the office of the Town Administrator shall be filled as soon as
43 possible by the Selectmen. Pending the appointment of a Town Administrator or the filling of
44 any vacancy, the Selectmen shall, within seven days, appoint a suitable person to perform the
45 duties of the office.

46 Section 7. The Town Administrator may designate, subject to approval by the Board of
47 Selectmen, by letter filed with the Town Clerk, a qualified officer of the Town to perform his
48 duties during his temporary absence or disability. In the event of failure of the Administrator to
49 make such designation, the Selectmen may, by resolution, designate an officer of the Town to
50 perform the duties Section 8. The Board of Selectmen may, by a unanimous vote, remove the
51 Town Administrator. At least thirty days before such proposed removal shall become effective,
52 the Selectmen shall file a preliminary written resolution with the Town Clerk setting forth in
53 detail the specific reasons for the proposed removal, a copy of which resolution shall be
54 delivered to the Town Administrator. The Administrator may, within ten days of service of such
55 resolution, reply in writing to the resolution and may request a public hearing. Service will be
56 deemed to have been accomplished by leaving a copy of such resolution at the Administrator's

57 last known abode. If the Administrator so requests, the Board of Selectmen shall hold a public
58 hearing not earlier than twenty days nor later than thirty days after the filing of such request.
59 After such public hearing, if any, otherwise at the expiration of thirty days following the filing of
60 the preliminary resolution, and after full consideration, the Selectmen by a unanimous vote of the
61 full membership of the Board, may adopt a final resolution of removal. In the preliminary
62 resolution, the Selectmen may suspend the Administrator from duty, but shall in any case cause
63 to be paid to him forthwith any unpaid balance of his salary during the period of consideration of
64 the preliminary resolution following the filing of the preliminary resolution. Upon the adoption
65 of a final resolution of removal; the Selectmen shall pay the Administrator severance pay in the
66 amount equal to one month's pay for each full year of service to the Town, but in no event more
67 than an amount equal to three months pay.

68 Section 9. The Town Administrator shall receive such compensation for his services as
69 the Board of Selectmen shall determine but it shall not exceed the amount appropriated therefore
70 by the Town.

71 Section 10. In addition to specific powers and duties provided in this act, the Town
72 Administrator shall have the general powers and duties enumerated in this section:

73 a) The Town Administrator shall supervise the heads of all departments and shall
74 supervise and direct the general administration of all commissions, boards and offices except the
75 Board of Selectmen, the Regional School Committee, the Municipal Light Board, the Advisory
76 Board, the Library Trustees and the Moderator. He shall not, however, exercise any control over
77 the discretionary power vested by statute in any such board, committee, commission or office.

78 b) The Town Administrator, in accordance with the provisions of this act and with the
79 approval of the Board of Selectmen, except as otherwise expressly prohibited by the General
80 Laws, may reorganize, consolidate or abolish departments, commissions, boards or offices under
81 his direction and supervision in whole or in part, may establish such new departments,
82 commissions, boards or offices as he deems necessary and may transfer the powers and duties of
83 one department, commission, board or office to another.

84 c) The Town Administrator shall approve, upon the recommendation of department
85 heads, the appointment and removal of all officers and employees of the Town, subject to
86 Chapter thirty-one of the General Laws where applicable. Department heads shall select, on
87 merit and fitness alone, all department employees for such recommendation. The Town
88 Administrator shall appoint on merit and fitness alone, and may remove, subject to said Chapter
89 thirty-one where applicable, all officers and employees of the Town who are not otherwise
90 appointed or elected under this act. Town officers and employees not subject to the provision of
91 said Chapter thirty-one shall not be removed by the Town Administrator except on ten days
92 notice in writing, setting forth the cause of such removal.

93 d) Notwithstanding the provisions of Section one-hundred and eight of Chapter forty-one
94 of the General Laws, but subject to all applicable provisions of Chapter thirty-one of the General
95 Laws, the Town Administrator shall fix the compensation of all town officers and employees
96 subject to appointment by him.

97 e) The Town Administrator shall attend all regular meetings of the Board of Selectmen
98 except meetings at which his removal is being considered.

99 f) The Town Administrator shall keep full and complete records of his office, and shall
100 render as often as may be required by the Selectmen, but, in any case, annually, a full report of
101 all operations during the period reported on.

102 g) The Town Administrator shall keep the Selectmen fully advised as to the needs of the
103 Town and shall recommend to the Selectmen for adoption such measures requiring action by
104 them or by the Town as he may deem necessary or expedient.

105 h) The Town Administrator shall have jurisdiction over the rental and use of all Town
106 property and shall be responsible for the maintenance and repair of all Town buildings. He shall
107 be responsible for the preparation of plans and the supervision of work on existing buildings or
108 the construction of new buildings.

109 i) The Town Administrator shall be responsible for the purchase of all supplies and
110 materials and equipment, except books and educational materials for schools and books and
111 other media for libraries, and shall approve the award of all contracts for all departments of the
112 Town. He shall make purchases for departments not under his supervision only upon requisition
113 duly signed by the head of such department.

114 j) The Town Administrator shall administer either directly or through a person or persons
115 appointed by him in accordance with this act all provisions of general and special laws
116 applicable to said Town, all by-laws and all regulations established by the Selectmen.

117 k) The Town Administrator shall have authority, with the approval of the Board of
118 Selectmen, to prosecute, defend and compromise all litigation to which the Town is a party, and
119 shall be the executive officer of a public employer in the Town as referred to in Chapter two

120 hundred and fifty-eight of the General Laws pertaining to the processing of claims against the
121 Town.

122 l) The Town Administrator shall be the Selectmen's agent for collective bargaining and
123 may employ special counsel to assist him in the performance of these duties.

124 m) The Town Administrator shall secure on or before December first of each year from
125 all offices, boards and committees charged with equipment a list of all such equipment upon
126 forms approved by the Advisory Board. Such lists shall be filed with the Town Accountant who
127 shall transmit them to the clerk of the Advisory Board.

128 n) The Town Administrator shall attend all Town meetings and shall be permitted to
129 speak when recognized by the Moderator.

130 o) The Town Administrator shall be responsible for the implementation of Town meeting
131 votes and shall report annually in writing to the Town Meeting on the status of prior Town
132 Meeting votes on which implementation is not complete.

133 p) The Town Administrator shall be accessible and available for consultation to chairmen
134 of boards, committees and commissions of the Town, whether appointed or elected, and shall
135 make accessible and available to them all such data and records of his office as may be requested
136 in connection with their official duties.

137 q) The Town Administrator shall perform such other duties, consistent with his office, as
138 may be required of him by the by-laws of the Town or by vote of the Selectmen or Town
139 Meeting.

140 Section 11. The Town Administrator may without notice cause the affairs of any division
141 or department under his supervision or the job-related conduct of any officer or employee thereof
142 to be examined. The Town Administrator shall have access to all Town books and papers for
143 information necessary for the proper performance of his duties. The Town Administrator shall
144 promptly transmit any findings of wrongdoing to the Board of Selectmen.

145 Section 12. The Town Administrator shall appoint, with the approval of the Board of
146 Selectmen, the Town Treasurer-Tax Collector, the Assessors, the Commission of Trust Funds,
147 the Industrial Commission, Energy Conservation and Fuel Allocation Board, Council on Aging,
148 Conservation Commission, Board of Registrars, Zoning Board of Appeals, Election Officials,
149 Parks and Recreation Commission, and all other Town officials whose appointment or election is
150 not specifically provided for herein. Unless otherwise specified by statute, all boards,
151 commissions, committees and councils which are appointed by the Town Administrator shall be
152 appointed for a specific term of office, not to exceed five years, but so that at least one term
153 expires each year. The Town Administrator shall appoint, and may remove subject to the
154 approval of the Board of Selectmen and subject to the provisions of Chapter thirty-one of the
155 General Laws where applicable, all department heads, all officers and all subordinates and
156 employees for whom no other method of appointment is provided in this act, except persons
157 serving under other elected agencies and appointments made by representatives of the
158 Commonwealth.

159 Appointments to permanent positions made by the Town Administrator shall become
160 effective on the fifteenth day following the day notice of appointment is filed with the Board of
161 Selectmen, unless the Board of Selectmen shall, within that period, by a majority vote of the full

162 board, vote to reject any such appointment. Nothing herein shall be construed to conflict with
163 Chapter thirty-one of the General Laws where applicable.

164 Section 13. The registered voters of the Town of Ashburnham shall, in accordance with
165 any applicable laws, by-laws and votes of the Town, continue to elect the following:

166 a) Moderator

167 b) Board of Selectmen

168 c) Regional School Committee Members

169 d) Planning Board

170 e) Board of Health

171 f) Library Trustees

172 g) Municipal Light Board

173 h) Town Clerk

174 The provisions of this act shall not affect the term of office of any such elected official or
175 elected member of such board, committee or authority. Every other elective office, board,
176 committee or commission of the Town shall be terminated or shall become appointive as
177 provided herein, any other provision of law to the contrary notwithstanding. The term of office
178 of any person elected to any office, board, committee or commission of the Town, existing at the
179 time of such acceptance and terminated hereunder shall continue until the appointment of the
180 Town Administrator, and thereafter the said offices, boards, committees and commissions shall
181 be abolished and all powers, duties and obligations conferred or imposed thereon by law, except

182 as provided by this act, shall be conferred and imposed upon the Town Administrator to the
183 extent hereinafter provided. The term of office of any person elected to any office, board,
184 committee or commission existing as an elected office at the time of the acceptance of this act
185 and having become appointive hereunder, shall continue until the term for which that person was
186 elected shall have expired, and until the appointment and qualification of his successor.

187 The powers, duties and responsibilities of elected officials shall be as now or hereafter
188 provided by applicable provisions of General Laws, special acts, by-laws and votes of the Town,
189 except as otherwise expressly provided herein.

190 Notwithstanding the election by the voters of the Town of the officers named in this
191 section, such officer shall be available to the Administrator for consultation, conference and
192 discussion on matters relating to their respective offices. The Town Administrator may require
193 all such officials, except the Selectmen, to prepare reports for the Town Administrator necessary
194 for the efficient administration of any of his fiscal responsibilities.

195 Section 14. At least ninety days prior to the annual town meeting, the Town
196 Administrator shall submit to the Board of Selectmen a careful, detailed estimate in writing of
197 the probable expenditures of the Town government for the ensuing fiscal year, stating the
198 amount required to meet the interest and maturing bonds and notes or other outstanding
199 indebtedness of the Town, and showing specifically the amount necessary to be provided for
200 each fund and department, together with a statement of the expenditures of the Town for the
201 same purposes in the preceding year and an estimate of the expenditures for the current year. He
202 shall also submit a statement showing all revenues received by the Town in the preceding fiscal
203 year together with an estimate of the receipts of the current year and an estimate of the amount of

204 income from all sources of revenue exclusive of taxes upon property in the ensuing year. He
205 shall report the probable amount required to be levied and raised by taxation to defray all
206 expenses and liabilities of the Town together with an estimate of the tax rate necessary to raise
207 said amount. For the purposes of enabling the Town Administrator to make up the annual
208 estimates of expenditures, all boards, offices, and committees of the Town shall, at least one
209 hundred and twenty days prior to the annual town meeting, furnish all information in their
210 possession and submit to him in writing, a detailed estimate of the appropriations required for the
211 efficient and proper conduct of their respective departments during the next fiscal year.

212 Section 15. The Board of Selectmen shall consider the tentative budget submitted by the
213 Town Administrator and make such recommendations relative thereto as they deem expedient
214 and proper in the interests of the Town. On or before the seventy-fifth day prior to the annual
215 town meeting, the Board of Selectmen shall transmit a copy of the budget, together with their
216 recommendations relative thereto, to each member of the Financial Advisory Board.

217 Section 16. The Town Administrator shall be the chief fiscal officer of the Town.
218 Warrants for the payment of Town funds prepared by the Town Accountant in accordance with
219 the provisions of Section fifty-six of Chapter forty-one of the General Laws shall be submitted to
220 the Town Administrator. The approval of any such warrant by the Town Administrator shall be
221 sufficient authority to authorize payment by the Town Treasurer, but the Selectmen shall approve
222 all warrants in the event of a vacancy in the office of the Town Administrator.

223 Section 17. All laws, by-laws, votes, rules and regulations, whether enacted by authority
224 of the Town or any other authority, which are in force in the Town of Ashburnham on the
225 effective date of this act, or any portion or portions thereof, not inconsistent with the provisions

226 of this act, shall continue in full force and effect until otherwise provided by other laws, by-laws,
227 votes, rules and regulations, respectively. All other laws, by-laws, votes, rules and regulations so
228 far as they refer to the Town of Ashburnham, are hereby suspended but such suspension shall not
229 revive any pre-existing enactment.

230 Section 18. No contract existing and no action at law or suit in equity, or other
231 proceeding pending on the effective date of this act, or at the time of revocation of such
232 acceptance, shall be affected by such acceptance or revocation, except that upon revocation any
233 contract made by the Town with the Town Administrator then in office shall be terminated
234 immediately upon such vote subject only to termination payment rights under section eight.

235 Section 19. Any person holding a Town office or employment under the Town shall
236 retain such office or employment and shall continue to perform his duties until provisions shall
237 have been made in accordance with this act for the performance of said duties by another person
238 or agency. No person who continues in the permanent full-time service or employment of the
239 Town shall forfeit his pay grade or time in service.

240 Section 20. Approved October 14, 1986.

241 SECTION 3. This act shall take effect upon its passage.