

SENATE No. 01906

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven.

SECTION 1. Chapter 428 of the Acts of 1985 is hereby repealed.

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

Section 1. Upon the effective date of this act, the Town of Ashburnham shall be governed by the provisions of this act. To the extent that the provisions of this act modify or repeal existing general laws and special acts or that body of law which constitutes the town charter under Section 9 of Article LXXXIX of the Amendments to the Constitution of the Commonwealth, this act shall govern. For the purposes of this act, all references to officers, employees or other personnel shall apply equally to males and females regardless of the gender or pronoun used. This act shall be cited and shall be known as the Ashburnham Governmental Act.

Section 2. The Board of Selectmen of said Town of Ashburnham shall appoint the Town Accountant, the Historical Commission, the Arts Commission, the Constables, the Water and Sewer Commissioners, , Town Counsel and all other boards, committees and commissions except those appointed by the Moderator or otherwise appointed in accordance with the provisions of this act. The Moderator shall continue to appoint officials heretofore appointed by the Moderator.

The executive powers of the Town shall be vested in the Board of Selectmen who shall serve as the chief policy making agency of the Town. The Board of Selectmen shall continue to have and to exercise all of the powers and duties vested in boards of selectmen by the laws of the Commonwealth or by the vote of the Town, except otherwise provided herein.

Section 3. The Regional School Committee members shall continue to be elected in conformity with the votes of the Regional School District. All powers, rights and duties, now or hereafter conferred or imposed by law upon the Regional School Committee, shall be exercised and performed by the Regional School Committee. Nothing in this act shall be construed to affect the powers and duties of the Regional School Committee as provided by law.

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

Section 5. The Selectmen elected as provided herein shall appoint, as soon as practicable, for a definite term to be set by the Selectmen, a Town Administrator who shall be a person especially fitted by education, training and experience to perform the duties of the office. The Town Administrator shall be appointed without regard to his political affiliations or beliefs. The Town Administrator shall devote full time to the office and without prior approval of the Board, shall not hold any other public office, elective or appointed, nor shall he engage in any other business, occupation or profession during the term of office which would deprive him from devoting full time to his duties during normal working hours. He need not be a resident of the Town or of the Commonwealth when appointed, but shall become a resident of the Town or reside in any Massachusetts town within a 40 mile radius of Ashburnham during the first year of his appointment unless otherwise provided by the Selectmen. He shall possess a college degree at the bachelor level and shall have had three years of full-time paid experience in a supervisory administrative position a portion of which (full time or part time) must be in the public sector. A masters degree may substitute for not more than one year of such paid experience. He shall execute a bond in favor of the Town for the faithful performance of his duties in such sum and with such surety or sureties as may be fixed or approved by the Selectmen, the cost for which shall be paid by the Town. The Selectmen may enter into a formal contract with the Town Administrator for a probationary period of six (6) months with subsequent terms of up to three (3) years. The Selectmen shall cause said contract to be reviewed by legal counsel. The Selectmen may set a job description for the Town Administrator which shall take precedence over any personnel by-laws.

The Town Administrator shall receive such compensation for his or her services as the Board of Selectman shall determine but it shall not exceed the amount appropriated therefor by the town.

Section 6. If the office of the Town Administrator is vacant, as a result of death, removal, resignation, or otherwise, or the Town Administrator is on a leave of absence exceeding 2 weeks, the Board of Selectmen by affirmative vote of a majority of its members, shall appoint a qualified individual to serve as acting Town Administrator. Any vacant in the office of the Town Administrator shall be filled as soon as possible by the Selectmen.

Section 7. The Town Administrator may designate, subject to approval by the Board of Selectmen, by letter filed with the Town Clerk, a qualified officer or individual of the Town to perform his duties during his temporary absence or disability. In the event of failure of the Administrator to make such designation, the Selectmen may, by resolution, designate an officer or individual of the Town to perform the duties

Section 8. The Board of Selectmen may remove the Town Administrator from office in accordance with the following procedure.

a. The Board of Selectmen shall adopt a preliminary resolution of removal by an affirmative vote of a majority of its members. Said preliminary resolution shall be in writing. At least thirty days before such proposed removal shall become effective a copy of the preliminary written resolution shall be sent to the Town Administrator by certified and first class mail to his address on record with the Town. In the preliminary resolution, the Selectmen may suspend the Administrator from duty, but shall in any case cause to be paid to him forthwith any unpaid balance of his salary during the period of consideration of the preliminary resolution following the service of said preliminary resolution upon the Town Administrator.

b. The Town Administrator may, within ten days of service of such resolution, reply in writing to the resolution and may request a public hearing. If the Town Administrator so requests, the Board of Selectmen shall hold said public hearing not earlier than twenty days no later than thirty days after the filing of such request. Following such public hearing, if any, and otherwise at the expiration of thirty days following the filing of the preliminary resolution, and after full consideration, the Selectmen by a unanimous vote of the full membership of the Board, may adopt a final resolution of removal. Upon the adoption of a final resolution of removal, the Selectmen shall pay the Administrator severance pay in the amount equal to one month's pay for each full year of service to the Town, but in no event more than an amount equal to three months pay.

Section 9. Annually for the ensuing year, the Board of Selectmen in conjunction with the Town Administrator shall define goals and performance objectives which both parties determine necessary for the proper operation and welfare of the Town and in the attainment of the policy objectives of the Board. The Board of Selectmen and Town Administrator shall further establish a relative priority among those various goals and objectives. Said goals and objectives shall be reduced to writing. During the first year of employment, the Board of Selectmen and the Town Administrator will meet and set goals and objectives after six months. The Board of Selectmen shall review and evaluate the performance of the Town Administrator on a formal basis once annually under the terms and conditions of this act. Said review and evaluation shall include, but not be limited to: the Town Administrator's progress and performance on the annual goals and objectives as described in this section; budgetary and financial administration; personnel administration, supervision and leadership; staff development; public relations; employee and labor relations; policy execution; and interaction with the Board of Selectmen as well as the governmental officials, departments, boards and committees. The Town shall provide the Town Administrator with a written evaluation report after each formal review and evaluation and shall provide the Town Administrator with an opportunity to discuss his review and evaluation with the Board of Selectmen in a workshop session and submit written comments in relation thereto.

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

a) The Town Administrator shall be responsible to the Board of Selectmen for the efficient administration of all departments, commissions, boards and offices placed in the town administrator's charge by this act, the Board of Selectmen of vote of town meetings, except the Board of Selectmen, the Regional School Committee, the Municipal Light Board, the Advisory Board, the Library Trustees, the Moderator and other Boards, Committees, Commissions or officers whose discretionary power is vested by statute.

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

c) The Town Administrator shall approve, upon the recommendation of department heads, the appointment and removal of all officers and employees of the Town, subject to Chapter thirty-one of the General Laws where applicable. Department heads shall select, on merit and fitness alone, all department employees for such recommendation. The Town Administrator shall appoint on merit and fitness alone, and may remove, subject to said Chapter thirty-one where applicable, all officers and

employees of the Town who are not otherwise appointed or elected under this act. Town officers and employees not subject to the provision of said Chapter thirty-one shall not be removed by the Town Administrator except on ten days notice in writing, setting forth the cause of such removal.

d) Notwithstanding the provisions of Section one-hundred and eight of Chapter forty-one of the General Laws, but subject to all applicable provisions of Chapter thirty-one of the General Laws, the Town Administrator shall fix the compensation of all town officers and employees subject to appointment by him, except in the case of Department Heads and any employees under a written contract with the town. Compensation, changes in compensation or benefits, or contract renewals may be recommended by the Town Administrator and shall become effective only upon a majority vote of the Board of Selectmen.

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

f) The Town Administrator shall keep full and complete records of his office, and shall render as often as may be required by the Selectmen, but, in any case, annually, a full report of all operations during the period reported on. The members of the Board of Selectmen shall have full access to records upon request unless access is restricted by statute and shall be bound by any confidentiality or privilege required by law.

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

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

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

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

k) The Town Administrator shall have authority, with the approval of the Board of Selectmen, to prosecute, defend and compromise all litigation to which the Town is a party, and shall be the executive officer of a public employer in the Town as referred to in Chapter two hundred and fifty-eight of the General Laws pertaining to the processing of claims against the Town.

l) The Town Administrator shall be the Selectmen's agent for collective bargaining and shall negotiate within parameters as may be established by the Selectmen. The Town Administrator may employ special counsel to assist him in the performance of these duties. Any grievances filed by any collective bargaining unit group shall be brought to the attention of the Board of Selectmen by the Town Administrator.

m) The Town Administrator shall assist the Capital Planning Committee in preparation of the Town's capital plan.n) The Town Administrator shall attend all Town meetings and shall be permitted to speak when recognized by the Moderator.

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

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

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

r) The Town Administrator shall act as grant coordinator for the Town. He shall collect and distribute information concerning grants, establish uniform procedures for grant applications, prepare and assist in developing grant proposals and shall monitor all Town grants to ensure fiscal and program compliance. Any grant that may add personnel or increase the operating costs of the Town in the current or future years shall be approved by the Selectmen prior to submission.

s) The Town Administrator shall act as the Town's insurance coordinator. He shall be responsible for ensuring that all pertinent policies are in effect, the adequate insurance coverage is provided, that claims are properly processed, conduct cost benefit analyses on existing policies and propose changes. He shall render an annual report to the Board of Selectmen on all claims made and losses sustained.

t) The Town Administrator shall plan, organize and supervise the operational audits of the activities of Town departments to evaluate the efficiency of resource utilization and the effectiveness of governmental services. Audit areas may

u) The Town Administrator shall ensure that the Town maintains a professional personnel system by monitoring the effectiveness of policies, procedures and practices as required by law, in accordance with proper personnel practices. He shall ensure that the recruitment, selection, promotion, transfer, discipline, and removal of employees are conducted in accordance with applicable state and federal laws, and with personnel by-laws and policies adopted pursuant to the same.

v) The Town Administrator shall facilitate crisis intervention in emergency situations working with the key officials in Town including the Chair of the Board of Selectmen, Police Chief, Fire Chief, DPW and Water/Sewer Superintendents, Superintendent of Schools and Town Counsel.

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

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

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

- a) Moderator
- b) Board of Selectmen
- c) Regional School Committee Members
- d) Planning Board
- e) Board of Health
- f) Library Trustees
- g) Municipal Light Board

Section 14. At least ninety days prior to the annual town meeting, the Town Administrator shall submit to the Board of Selectmen a careful, detailed estimate in writing of the probable expenditures of the Town government for the ensuing fiscal year, stating the amount required to meet the interest and maturing bonds and notes or other outstanding indebtedness of the Town, and showing specifically the amount necessary to be provided for each fund and department, together with a statement of the expenditures of the Town for the same purposes in the preceding year and an estimate of the expenditures for the current year. He shall also submit a statement showing all revenues received by the Town in the preceding fiscal year together with an estimate of the receipts of the current year and an estimate of the amount of income from all sources of revenue exclusive of taxes upon property in the ensuing year. He shall report 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 tax rate necessary to raise said amount. For the purposes of enabling the Town Administrator to make up the annual estimates of expenditures, all boards, offices, and committees of the Town shall, at least one hundred and twenty days prior to the annual town meeting, furnish all information in their possession and submit to him in writing, a detailed estimate of the appropriations required for the efficient and proper conduct of their respective departments during the next fiscal year.

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

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

Section 17. All laws, by-laws, votes, rules and regulations, whether enacted by authority of the Town or any other authority, which are in force in the Town of Ashburnham on the effective date of this act, or any portion or portions thereof, not inconsistent with the provisions of this act, shall continue in full force and effect until otherwise provided by other laws, by-laws, votes, rules and regulations, respectively. All other laws, by-laws, votes, rules and regulations so far as they refer to the Town of Ashburnham, are hereby suspended but such suspension shall not revive any pre-existing enactment.

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

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

Section 20. Approved November 17, 2010.

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