

SENATE No. 02005

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:

SECTION 1. Chapter 428 of the acts of 1986 is hereby repealed.

SECTION 2. This act may be cited and known as the Ashburnham governmental charter.

SECTION 3. 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 this charter. To the extent that this charter modifies or repeals existing general or special laws 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 charter shall govern. For the purposes of this charter, all references to officers, employees or other personnel shall apply equally to males and females regardless of the gender or pronoun used.

Section 2. The board of selectmen of the town of Ashburnham shall appoint the town accountant, the water and sewer commissioners, the town counsel, the constables and the members of the historical commission, the arts commission and all other boards, committees and commissions except those appointed by the moderator or otherwise appointed in accordance with this charter. 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 and it 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 vote of town meeting, except as otherwise provided in this charter.

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 charter shall be construed to affect the powers and duties of the regional school committee as provided by law.

Section 4. No member of the board of selectmen, the regional school committee or the advisory board, during the term for which such member was elected or appointed, shall be eligible either by election or appointment to hold any other town office. Any person appointed by the town administrator to any town office under this charter or any general or special law shall be eligible during the term of such office for appointment to any other town office, except that the town accountant shall not be eligible to hold the positions of town treasurer or town collector. The town administrator, subject to any applicable general law relating thereto, may assume the duties of any office which he is authorized to fill by appointment.

Section 5. The board of selectmen, elected as provided in section 13, shall appoint, by majority vote, a town administrator as soon as practicable and for a definite term to be set by the selectmen. The town administrator shall be a person especially suited by education, training and experience to perform the duties of the office and shall be appointed without regard to his political affiliations or beliefs. The town administrator shall devote full-time to the office and shall not hold any other public office, elective or appointed, without prior approval of the board of selectmen, nor engage in any other business, occupation or profession during his term of office which would deprive him from devoting full-time to his duties during normal working hours. The town administrator need not be a resident of the town or of the commonwealth when appointed but he shall become a resident of the town of Ashburnham or of a town in the commonwealth within a 40 mile radius of Ashburnham during the first year of his term of office unless otherwise provided by the board of selectmen. The town administrator shall possess a college degree at the bachelor level and shall have had 3 years of full-time, paid experience in a supervisory administrative position, a portion of which, either full-time or part-time, shall have been in the public sector. A masters degree may substitute for not more than 1 year of such paid experience. The town administrator 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 board of selectmen and the cost for

such bond shall be paid by the town. The board of selectmen may enter into a formal contract with the town administrator for a probationary period of 6 months to be followed by a term or terms not to exceed 3 years per term. The board of selectmen shall cause the contract to be reviewed by legal counsel. The board of selectmen may establish a job description for the town administrator, which shall take precedence over any personnel by-laws of the town.

The town administrator shall receive such compensation for his services as the board of selectman shall determine but such compensation shall not exceed the amount appropriated therefor by the town.

Section 6. If the office of the town administrator becomes vacant as a result of death, removal, resignation or otherwise or if the town administrator is granted 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 vacancy in the office of the town administrator shall be filled as soon as possible by the board of selectmen.

Section 7. Subject to approval by the board of selectmen, the town administrator may designate, by letter filed with the town clerk, a qualified officer or individual of the town to perform the town administrator's duties during a temporary absence or disability. If the town administrator fails to make such a designation, the board of selectmen may, by resolution, designate an officer or individual of the town to perform the duties of the town administrator until the town administrator shall return or his disability shall cease. In any case, the selectmen shall approve all warrants during the absence or disability of the town administrator.

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, in writing, by an affirmative vote of a majority of its members. At least 30 days before such proposed removal shall become effective, a copy of the preliminary resolution shall be sent to the town administrator, by certified and first class mail, to his address of record with the town. In the preliminary resolution, the board of selectmen may suspend the town administrator from duty.

(b) Within 10 days of receipt of service of such resolution, the town administrator may reply, in writing, to the resolution and request a public hearing. If the town administrator so requests, the board of selectmen shall hold a public hearing not earlier than 20 days but not later than 30 days after the filing of such request. Following the public hearing, if any, and otherwise at the expiration of 30 days following the filing of the preliminary resolution, the selectmen may adopt a final resolution of removal, after

full consideration and by unanimous vote of the full membership of the board. Upon the adoption of a final resolution of removal, the selectmen may pay the town administrator severance pay in the amount equal to 1 month's pay for each full year of service to the town, but not more than an amount equal to 3 months' pay.

Section 9. The board of selectmen, in conjunction with the town administrator, shall annually define goals and performance objectives for the ensuing year, which the board and the town administrator determine necessary for the proper operation and welfare of the town and to attain the policy objectives of the board provided, however, that the town administrator and the board of selectmen shall meet and set such goals and objectives after the expiration of 6 months of a town administrator's first year in office. The board of selectmen and town administrator shall further establish, in writing, a relative priority among the various goals and objectives.

The board of selectmen shall review and evaluate the performance of the town administrator on a formal basis once annually. The review and evaluation shall include, but not be limited to: the town administrator's progress and performance relative to 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 governmental officials and the town's board of selectmen, departments, committees and other boards. After each formal review and evaluation, the town's board of selectmen shall provide the town administrator with a written evaluation report and with an opportunity to discuss the review and evaluation with the board of selectmen and submit written comments in relation thereto.

Section 10. In addition to the specific powers and duties provided in this charter, the town administrator shall have the following general powers and duties:

(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 charter, the board of selectmen or vote of town meeting, 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, the discretionary powers of which are granted by statute.

(b) With the approval of the board of selectmen, the town administrator may, in accordance with this charter and unless expressly prohibited by general law: reorganize, consolidate or abolish departments, commissions, boards or offices under his direction and supervision, in whole or in part; establish such new departments, commissions,

boards or offices as he deems necessary; and transfer the powers and duties of 1 department, commission, board or office to another.

(c) The town administrator may approve, upon the recommendation of department heads, the appointment and removal of all officers and employees of the town, subject to chapter 31 of the General Laws. 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 31, all officers and employees of the town who are not otherwise appointed or elected under this charter. Town officers and employees not subject of said chapter 31 shall not be removed by the town administrator except after 10 days notice in writing, setting forth the cause of such removal.

(d) Notwithstanding section 108 of chapter 41 of the General Laws, but subject to chapter 31 of the General Laws, the town administrator shall fix the compensation of all town officers and employees subject to appointment by him, except 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 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 a full report of all operations during the period which the report covers and such a report shall be submitted as often as may be required by the selectmen but at least annually. Upon request, the members of the board of selectmen shall have full access to these records, unless such access is restricted by statute, provided, however, that the board shall not disclose any confidential or privileged information protected by law.

(g) The town administrator shall keep the board of 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 deems 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, 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 charter, all general and special laws applicable to the town, all town by-laws and all regulations established by the board of selectmen.

(k) The town administrator shall have authority, subject to 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 designated executive officer of a public employer in the town, in accordance with section 1 of chapter 258 of the General Laws, for the purpose of processing claims against the town.

(l) The town administrator shall be the board of selectmen's agent for collective bargaining and shall negotiate within parameters as may be established by the board. The town administrator may employ special counsel to assist him in the performance of these duties. Any grievance filed by a 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 incomplete implementation of any prior town meeting vote.

(p) The town administrator shall be accessible and available for consultation to the chairmen of boards, committees and commissions of the town, whether appointed or elected, and shall make all data and records of his office accessible and available to the chairmen as they may request 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 board of selectmen or of 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 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 a current or future year shall be approved by the board of selectmen prior to the submission thereof.

(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; that adequate insurance coverage is provided; that claims are properly processed; and that cost benefit analysis is conducted on existing policies and propose changes thereto. He shall render an annual report to the board of selectmen on all claims made and any 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 include staffing, scheduling, vehicle management, and any other area requested by the board of selectmen.

(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 and in accordance with proper personnel practices. He shall ensure that the recruitment, selection, promotion, transfer, discipline and removal of employees is conducted in accordance with applicable state and federal laws and with personnel by-laws and policies of the town adopted pursuant thereto.

(v) The town administrator shall facilitate crisis intervention in emergency situations working with the key officials of the town including the chair of the board of selectmen, the police chief, the fire chief, the department of public works, the water-sewer superintendent, the superintendent of schools and the town counsel.

Section 11. The town administrator may, without notice, cause the examination of the affairs of any division or department under his supervision or of the job-related conduct of any officer or employee thereof. The town administrator shall have access to all town books and papers for information necessary for the proper performance of such examination. The town administrator shall promptly transmit any findings of wrongdoing to the board of selectmen.

Section 12. Upon the expiration of the term of the town clerk in office on the effective date of this act, or if such office shall become vacant before the expiration of such term, the town administrator shall appoint the town clerk with the approval of the board of selectmen. The town administrator shall appoint, with the approval of the board of selectmen, the town treasurer, the tax collector, the assessors, the commission of trust funds, the industrial commission, the energy conservation and fuel allocation board, the council on aging, the conservation commission, the board of registrars, the zoning board of appeals, the election officials, the parks and recreation commission, and all other town officials whose appointment or election is not specifically provided for in this section.

Unless otherwise specified by general or special law, members of all boards, commissions, committees and councils appointed by the town administrator shall be appointed for a specific term of office, not to exceed 5 years, provided, however, that for each such board, commission, committee and council, the term of at least 1 member shall expire each year. The town administrator shall appoint and may remove, subject to the approval of the board of selectmen and to chapter 31 of the General Laws, department heads, officers and subordinates and employees for whom no other method of appointment is provided in this charter. 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 applicable law, town by-law and vote of the town, continue to elect the following:

- (a) the moderator;
- (b) the board of selectmen;
- (c) the regional school committee members;
- (d) the planning board;
- (e) the board of health;
- (f) the library trustees; and
- (g) the municipal light board.

Section 14. At least 90 days prior to the annual town meeting, the town administrator shall submit to the board of selectmen a careful, detailed and written estimate 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 specifically showing 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 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. The town administrator 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 that amount. For the purposes of enabling the town administrator to project the annual estimates of expenditures, all boards, offices and committees of the town shall, at least 120 days prior to the annual town meeting, furnish all information in their possession and

submit to him a detailed, written 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 it deems expedient and proper in the best 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 its recommendations relative thereto, to each member of the 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 section 56 of chapter 41 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, provided, however, that the board of selectmen shall approve all warrants in the event of a vacancy in the office of the town administrator. The town administrator shall present all warrants to the selectmen for review.

Section 17. All laws, town by-laws, votes, rules and regulations, 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 this charter, shall continue in full force and effect until otherwise provided by other law, town by-law, vote, rule or regulation, respectively. If any general or special law, town by-law, vote, rule or regulation is inconsistent with this charter, the provisions of this charter shall control.

Section 18. On the effective date of this act, any person holding a town office or employed by the town shall retain such office or employment and continue to perform his duties until another person or agency is selected to perform the duties thereof in accordance with the Ashburnham governmental charter. No person who continues in the permanent full-time service or employment of the town pursuant to this section shall forfeit his pay grade or time in service.

SECTION 4. This act shall take effect upon its passage.