

SENATE No. 2681

Senate, December 13, 2018 – Text of Senate amendment (Senator deMacedo) to House Bill establishing a town manager form of government for the town of Pembroke (House, No. 4607).

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

1 SECTION 1. Chapter 284 of the acts of 1991 is hereby repealed.

2 SECTION 2. There shall be a town manager form of government in the town of
3 Pembroke which shall be established as provided in this section.

4 Section 1. CONTINUATION OF EXISTING GOVERNMENT

5 (A) Continuation of Existing Laws, By-Laws, Personnel, Etc.

6 All special acts, by-laws, rules and regulations in force on the effective date of this act
7 that are not inconsistent with this act shall continue in full force until amended or repealed.
8 Elected and appointed officers, boards, commissions and committees shall have all of the
9 powers, duties and responsibilities not inconsistent with this act, that are in force on the effective
10 date of this act and given to the respective boards, officers and agencies by law, this act, by-law
11 or town meeting vote.

12 If any provision of this act conflicts with a federal law or regulation, the federal law or
13 regulation shall govern.

14 If any provision of this act conflicts with any general or special law or with any by-law,
15 rule or regulation of the town, this act shall govern.

16 (B) Continuation of Personnel, Contracts, Transfer of Records and Property

17 Any office or position in the administrative service of the town and any incumbents in
18 any such office on the effective date of this act shall continue to function as it did before the
19 effective date of this act until a change in any such office, position or incumbent is effected
20 pursuant to this act. No contracts or liabilities in force on the effective date of this act shall be
21 affected by the acceptance of this act by the town and any office or department established
22 pursuant to this act shall be the lawful successor of the office or department so abolished.

23 All records, property and equipment whatsoever of any office or department or any part
24 thereof, the powers and duties of which are assigned in whole or in part to another office or
25 department, shall be assigned to such office or department.

26 Section 2. SELECT BOARD

27 (A) Composition

28 There shall be a 5-member select board who shall be elected for 3-year terms, so arranged
29 that the term of office of as nearly an equal number of members as is possible shall expire each
30 year.

31 (B) Vacancy in Office

32 A vacancy in the office of the selectmen shall be filled in accordance with the General
33 Laws.

34 (C) Executive Powers

35 (1) The executive powers of the town shall be vested in the select board and the
36 select board shall serve as the chief policymaking body of the town.

37 (2) The select board shall have all of the executive powers of select boards as
38 provided by law and may enter into intergovernmental, public or private agreements on such
39 terms as it deems beneficial to the citizens of the town.

40 (3) The select board shall develop and promulgate policy directives and
41 guidelines which shall be followed by all agencies serving under it and, in conjunction with other
42 elected town officers and multiple-member bodies, shall develop and promulgate policy
43 guidelines designed to bring the operation of all town agencies into harmony; provided, however,
44 nothing in this section shall authorize any member of the select board or a majority of such
45 members to become involved in the day-to-day administration of a town agency.

46 (4) The select board shall enforce the by-laws, rules and regulations for the
47 government of the town to be enforced and shall keep an up-to-date record of all its official acts.

48 (5) The select board shall appoint the town manager and the town counsel, and
49 shall approve the selection of the town audit firm.

50 (6) The select board shall be the licensing board of the town and may issue
51 licenses, make all rules and regulations relative to the issuance of such licenses and attach such
52 conditions and restrictions thereto as it deems to be in the public interest. The select board shall
53 enforce the laws relating to businesses that have been issued licenses. The select board may

54 delegate or reorganize any local licensing authority or process notwithstanding any general law
55 to the contrary relating to local governance.

56 (7) The select board shall provide for timely audits as required by law. An audit
57 shall be conducted by a certified public accountant or by a firm of certified public accountants
58 who shall have no personal interests, direct or indirect, in the fiscal affairs of the town
59 government or any of its officers.

60 Section 3. TOWN MANAGER

61 (A) Appointments, Qualifications, Terms of Office and Terms of Employment

62 (1) Appointments

63 There shall be an office of town manager in the town of Pembroke. The town
64 manager shall be appointed by the select board for a term of not more than 3 years, as the select
65 board may determine, and the town manager may be appointed for successive terms. The select
66 board shall create a search committee to assist in the selection of candidates for the position of
67 town manager. The committee shall include 2 members of the select board, 1 advisory board
68 member and 2 members of the general public.

69 (2) Qualifications

70 The town manager shall be a person of demonstrated ability with administrative
71 experience in public management or business administration who shall be qualified by reason of
72 education and experience. The educational qualifications shall consist of at least a Bachelor's
73 degree in public administration or a related field; provided, however, that a Master's degree in

74 public administration or business shall be highly desirable. The candidates shall be persons with
75 executive and administrative qualifications, especially fitted by education, training and
76 experience to perform the duties of the office. The town may from time to time establish by-laws
77 establish to provide additional qualifications as it deems necessary and appropriate.

78 (3) Terms of Office

79 The town manager shall devote full time to the duties of town manager's office
80 and shall not engage in any other business or occupation during the term of such employment by
81 the town. The town manager shall not hold elective office in the town during the town manager's
82 tenure as such but the select board may appoint the town manager to any nonelective office or
83 position consistent with the responsibilities of the town manager and such office or position shall
84 be deemed a part of the town manager position. Before entering upon the duties of the office, the
85 town manager shall be sworn to the faithful and impartial performance thereof by the town clerk.
86 The town manager shall not have served in an elected office for the town for at least 24 months
87 prior to appointment as town manager.

88 (4) Terms of Employment, Additional Qualifications, Compensation

89 The select board may from time to time establish additional qualifications for the
90 office of town manager. To the extent permitted by law, the terms of the town manager's
91 employment shall be the subject of a written agreement between the parties setting forth the
92 length of service, compensation, annual review, vacation, sick leave, benefits and such other
93 matters, excluding tenure, as are customarily included in an employment contract.

94 The select board shall set the compensation of the town manager; provided,
95 however, that such compensation shall not exceed the amount appropriated therefor by the town
96 meeting.

97 Section 4. TOWN MANAGER - POWERS AND DUTIES

98 The town manager shall be the chief administrative officer of the town. The town
99 manager shall manage all town affairs placed in the town manager's charge by this act, by the
100 select board or by town meeting vote. The town manager shall implement town policies
101 established by the select board. The functions and duties of the town manager shall include, but
102 not be limited to:

103 (i) the appointment and removal of all nonelected department heads and the
104 approval of the appointment and removal of all other employees, except employees of the school
105 department and the fire department; provided, however, that the library director shall continue to
106 be appointed by the library trustees; provided further, that the town manager shall consult with
107 the appropriate elected or appointed board, commission, committee or official prior to the
108 appointment or removal of a department head; and provided further, that an appointment to or
109 removal from a department head position shall take effect on the twentieth day following the day
110 that notice of appointment or removal was filed with the select board;

111 (ii) the approval of appointments made by department heads; provided, however,
112 that department heads shall appoint and may remove assistant department heads, officers,
113 subordinates and employees, including employees serving under elected and appointed boards,
114 commissions, committees and officials for whom no other method of selection is provided in this
115 act, except employees of the school department and fire department; and provided further, that

116 the department head shall consult with the appropriate elected or appointed board, commission,
117 committee or official prior to making any such appointment or removal;

118 (iii) assuring that all initial appointments made are based on merit and fitness
119 alone;

120 (iv) the day-to-day supervision of all town departments and directing of the
121 operations of the town, excluding employees of the school department and fire department and
122 the statutory responsibilities and functions of the school committee;

123 (v) supervising and directing the efficient administration of all officers appointed
124 by the town manager and their representative departments and all functions for which the town
125 manager has been given responsibility, authority or control by this act, by by-law, by town
126 meeting vote or by vote of the select board;

127 (vi) reorganizing, consolidating or establishing any department or position under
128 the town manager's direction or supervision, at the town manager's discretion and transferring
129 all or part of any unexpended appropriation of a reorganized or consolidated department, board
130 or office to any other department, board or office;

131 (vii) administering, either directly or through a person appointed by the town
132 manager, all general and special laws applicable to the town, including federal and
133 Massachusetts emergency management agencies' requirements and the by-laws and votes of the
134 town within the scope of the town manager's duties and all policy rules and regulations made by
135 the select board;

136 (viii) establishing control and data systems appropriate to monitor expenditures by
137 town boards and departments to enable the town manager to make periodic reports to the select
138 board and the advisory committee on the status of the town's finances;

139 (ix) developing and administering a personnel system including, but not limited
140 to, the determination of rates of pay and the development and implementation of an ongoing
141 training program, evaluation process and personnel and hiring policies, practices and regulations
142 for town employees;

143 (x) managing all town buildings, properties and facilities, except those under the
144 control of the school committee and conservation commission; provided, however, that the town
145 manager may direct the maintenance of school committee, open space committee and
146 conservation commission buildings, properties and facilities to the extent the school committee,
147 and conservation commission may request and authorize;

148 (xi) attending and participating in all regular and special select board meetings
149 and town meetings unless excused therefrom by the select board;

150 (xii) causing full and complete records of meetings of the select board to be taken
151 and maintained and compile reports of the meetings as requested by the select board;

152 (xiii) acting as the liaison with and represent the select board before state, federal
153 and regional authorities;

154 (xiv) subject to policies established by the select board, approving all warrants or
155 vouchers, including payroll warrants, for the payment of town funds submitted by the town
156 accountant; provided, however, that any warrants generated by the town manager shall be signed

157 by the select board; and provided further, that if the town manager is unavailable or if there is a
158 vacancy in that office, the select board shall approve all warrants and vouchers;

159 (xv) Approving all grants submitted on behalf of the town;

160 (xvi) prosecuting, defending and settling all litigation to which the town is a party,
161 subject to the approval of the select board;

162 (xvii) inquiring and investigating the conduct and operation of all offices and the
163 performance of the duties of all officers and employees, departments, boards, commissions and
164 any other town agencies;

165 (xviii) coordinating the activities of employees serving in the office of the town
166 manager and in the office of the select board with those under the control of other officers and
167 multiple-member bodies elected directly by the voters; provided, however, that for this purpose,
168 the town manager may require the persons so elected, or their representatives, to meet with the
169 town manager at reasonable times to effect the coordination and cooperation of all town
170 agencies; and provided further, that the town manager may attend and speak at any public
171 meeting of a multiple -member body;

172 (xix) performing any other duties consistent with the office of town manager as
173 may be required by by-law, town meeting vote or vote of the select board;

174 (xx) preparing and submitting at a public meeting to the select board and advisory
175 committee not later than 90 days prior to the annual town meeting a written proposed balanced
176 budget for town government, including the school department, for the ensuing fiscal year;

177 (xxi) detailing all estimated revenues and expenditures, including debt service for
178 the previous, current and ensuing fiscal years, in the proposed budget from all sources; provided,
179 however, that the proposed budget shall also include proposed expenditures for both current
180 operations and capital expenditures for the ensuing fiscal year, together with estimated revenues
181 and free cash available at the close of the fiscal year, and estimated balances in special accounts;
182 provided further, that the town may, by by-law, establish additional financial reports to be
183 provided by the town manager; and provided further, that all town boards, officers and
184 committees, including the school committee, shall, within the timeframe requested by the town
185 manager, furnish all relevant information in their possession and submit to the town manager, in
186 writing and in such form as the town manager shall establish, a detailed estimate of the
187 appropriations required and available funds;

188 (xxii) negotiating collective bargaining contracts on behalf of the select board,
189 which contracts shall be subject to approval, ratification and execution by the select board. The
190 select board selectmen may authorize the use of additional counsel, as requested by the town
191 manager, to assist the town manager in the negotiations;

192 (xxiii) administering and enforcing collective bargaining agreements, personnel
193 rules and regulations and town by-laws; and

194 (xxiv) acting as the chief procurement officer under chapter 30B of the General
195 Laws for the purchase of all supplies, materials, services and equipment for the town and for the
196 bidding, awarding and execution of all contracts, except for school department contracts;
197 provided, however, that specifications for equipment purchases shall be written by the
198 appropriate department heads in consultation with the town manager

199 Section 5. TOWN MANAGER - VACANCY

200 (a) The select board shall fill a permanent vacancy in the office of the town manager as
201 soon as feasible in the manner provided in section 3. In the event of a vacancy, the select board
202 shall, not later than 14 days after such vacancy occurs, appoint a suitable person to temporarily
203 perform the duties of the town manager until a permanent replacement has been selected and
204 sworn in.

205 (b) The town manager may designate, by letter filed with the town clerk and the select
206 board, a suitable officer of the town to perform the duties of the town manager during the town
207 manager's temporary absence or disability; provided, however, that if the absence or disability
208 shall exceed 30 days, any designation by the town manager shall be subject to approval of the
209 select board. If the town manager fails to make such a designation or if the person so designated
210 is unable to serve, the select board shall designate a suitable person to perform the duties of the
211 town manager.

212 (c) An acting town manager's duties shall be limited to acting on matters not permitting
213 of delay. The acting town manager may make temporary, emergency appointments or
214 designations to town offices unless authorized by the select board to make permanent
215 appointments.

216 Section 6. TOWN MANAGER – REMOVAL, SUSPENSION

217 (a) The select board may remove or suspend the town manager . Prior to any such
218 removal or prior to a suspension that is to exceed 5 days, notice shall be given to the town
219 manager and the reasons for the proposed action shall be set forth in writing. The town manager

220 shall be afforded an opportunity to meet with the select board and respond to the proposed
221 action. After such meeting, if any, the select board may, upon the affirmative vote of 4 of its
222 members, remove the town manager or suspend the town manager for a period exceeding 5 days.

223 Section 7. DEPARTMENT OF PUBLIC WORKS

224 (a) There shall be an elected board of commissioners for the department of public works.
225 The board shall consist of 3 members who shall serve for 3-year, staggered terms. The
226 commissioners in office on the effective date of this act shall continue in office for the remainder
227 of their unexpired terms.

228 (b) Under the direction of the director of public works, the department of public works
229 shall continue to carry out and have all of the duties and responsibilities of the town's highway,
230 cemetery, tree and park divisions or departments. Except as provided in subsection (d), the
231 department of public works shall have all of the powers, duties and responsibilities that the
232 department of public works had prior to the effective date of this act.

233 (c) There shall be a director of public works who shall be appointed by the town
234 manager. The director of public works and town manager shall consult with the board of
235 commissioners to develop policy guidelines for the operations of the department of public works.
236 The board shall perform such other advisory functions related to the department of public works
237 as the director of public works or the town manager may request; provided however, that nothing
238 in this section shall authorize any member of the board or a majority of members thereof to
239 become involved in the day-to-day administration of the department of public works.

240 (d) Notwithstanding subsections (a) to (c), inclusive, the board of public works shall
241 continue to function as a board of water commissioners and shall continue to have all of the
242 powers, duties and responsibilities of the existing board of water commissioners. The board shall
243 continue to set water rates and maintain the Water Enterprise Fund.

244 (e) The vote of the town at the 1991 town election regarding article 67 is hereby
245 rescinded.

246 Section 8. TRANSITION PROVISION

247 The position of town administrator shall be abolished upon the appointment of a
248 town manager. If the town administrator position becomes vacant before a town manager is
249 appointed, the select board shall appoint an acting town administrator to fill such vacancy until
250 the town manager position has been filled pursuant to this act.

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