

SENATE No. 2778

Senate, March 17, 2022 -- Substituted by amendment by the Senate (Senator Pacheco) as a new draft for Senate, No. 1354.

The Commonwealth of Massachusetts

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

An Act providing for a gender neutral charter in the town of Middleborough.

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. The charter of the town of Middleborough, which is on file with the office
2 of the archivist of the commonwealth, as provided in section 12 of chapter 43B of the General
3 Laws, is hereby amended by striking out section 2 and inserting in place thereof the following
4 section:-

5 Section 2. At each annual town election, the voters shall elect by official ballot, in place
6 of any select board member whose term is about to expire, an equal number of select board
7 members, each to serve for 3 years. Members of the select board shall serve until their successors
8 are elected and have qualified. If, unless as the result of a recall election, any vacancy shall occur
9 in the membership of the select board, the remaining members shall call a special town election
10 to fill any such vacancy for the unexpired term, except that, if any such vacancy occurs less than
11 3 months prior to the annual town election and not less than 3 select board members remain in
12 office, the vacancies shall remain unfilled until such annual election. Any vacancy resulting from
13 a recall election shall be filled as hereinafter provided in this act.

14 SECTION 2. Section 3 of said charter is hereby amended by striking out the words
15 “Board of Selectmen” and inserting in place thereof the following words:- select board.

16 SECTION 3. Said section 3 of said charter is hereby further amended by striking out the
17 word “Selectmen”, each time it appears, and inserting in place thereof in each instance, the
18 following words:- select board.

19 SECTION 4. Said section 3 of said charter is hereby further amended by inserting after
20 the first paragraph the following paragraph:-

21 The select board shall also act as sewer commissioners and as the rent board with all
22 powers, rights, duties and liabilities conferred or imposed by law upon sewer commissioners and
23 rent boards.

24 SECTION 5. Section 4 of said charter is hereby further amended by striking out the
25 words “Board of Selectmen” and inserting in place thereof the following words:- select board.

26 SECTION 6. Section 5 of said charter is hereby further amended by striking out the
27 words “Board of Selectmen” and inserting in place thereof the following words:- select board.

28 SECTION 7. Said charter is hereby further amended by striking out section 6 and
29 inserting in place thereof the following section:-

30 Section 6. No bill or payroll contracted by the town manager or by any department under
31 the supervision of the select board shall be paid by the town treasurer until such bill or payroll
32 shall have been approved by the select board. The select board may designate 1 or more of its
33 members to make such approval but providing such authority to make such approval shall not
34 limit the responsibility of each member of the board. Whenever any payroll, bill or other claim

35 against the town is presented to the town manager, town clerk, town treasurer and collector of
36 taxes or trustees of the public library, if the payroll, bill or other claim seems to be of doubtful
37 validity, excessive in amount or otherwise contrary to the interests of the town, the town
38 manager, town clerk, town treasurer and collector of taxes or trustees of the public library shall
39 refer it to the committee and the committee shall immediately investigate the fact and report its
40 findings and recommendations to the select board and the select board shall determine what, if
41 any, payment should be made. Pending such investigation and determination, payment shall be
42 withheld.

43 SECTION 8. Section 7 of said charter is hereby amended by striking out the title and
44 inserting in place thereof the following title:-

45 SELECT BOARD MAY EMPLOY EXPERTS.

46 SECTION 9. Said section 7 of said charter is hereby further amended by striking out the
47 word "Selectmen", each time it appears, and inserting in place thereof, in each instance, the
48 following words:- select board.

49 SECTION 10. Section 9 of said charter is hereby amended by striking out the word
50 "Selectmen", each time it appears, and inserting in place thereof, in each instance, the following
51 words:- select board.

52 SECTION 11. Said charter is hereby further amended by striking out section 10 and
53 inserting in place thereof the following section:-

54 Section 10. The select board elected as provided in section 2 shall appoint a suitable
55 qualified person to the office of town clerk. The existing elective office of town clerk shall be

56 continued until the person appointed to the office of town clerk shall have qualified, at which
57 time the elective office of town clerk shall terminate. The town clerk shall enjoy all the powers
58 and rights and be subject to all the duties and liabilities now and hereinafter conferred or
59 imposed by law upon town clerks. The town clerk shall hold office at the pleasure of the select
60 board and shall be sworn to the faithful performance of the duties of the town clerk by the chair
61 of the select board or by a justice of the peace. In case of death, resignation or removal from
62 office of the town clerk, the select board shall forthwith appoint a suitably qualified person to fill
63 the vacancy.

64 SECTION 12. Section 12 of said charter is hereby amended by striking out the word
65 “Selectmen”, each time it appears, and inserting in place thereof, in each instance, the following
66 words:- select board.

67 SECTION 13. Section 13 of said charter is hereby amended by striking out the word
68 “Selectmen” and inserting in place thereof the following words:- select board.

69 SECTION 14. Said section 13 of said charter is hereby further amended by striking out
70 the word “him” and inserting in place thereof the following words:- the town manager.

71 SECTION 15. Section 14 of said charter is hereby amended by striking out the words
72 “Board of Selectmen” and inserting in place thereof the following words:- select board.

73 SECTION 16. Said section 14 of said charter is hereby further amended by striking out
74 subsection (B) and inserting in place thereof the following subsection:-

75 (B) Full-time police officers whose appointments are subject to chapter 31 of the General
76 Laws may be removed in accordance with said chapter 31, except that the tenure of office of the

77 chief shall, after the chief has served 5 continuous years, continue during good behavior as long
78 as the chief is able to perform duties of police chief and shall not be removed except after
79 hearing by the select board on written charges, a copy of which shall be furnished to the chief
80 prior to the hearing.

81 SECTION 17. Subsection (C) of said section 14 of said charter is hereby amended by
82 striking out the word “his” and inserting in place thereof the following words:- the chief’s.

83 SECTION 18. Said section 14 of said charter is hereby further amended by striking out
84 subsection (D) and inserting in place thereof the following subsection:-

85 (D) The police chief shall have all of the powers and duties required of the position
86 pursuant to section 97 of chapter 41 of the General Laws. Police officers shall have all of the
87 powers and duties required of the position by law and shall have all the powers and duties of
88 constables except those of serving and executing civil process.

89 SECTION 19. Subsection (E) of said section 14 of said charter is hereby amended by
90 striking out the word “Selectmen” and inserting in place thereof the following words:- select
91 board.

92 SECTION 20. Section 15 of said charter is hereby amended by striking out the word
93 “Selectmen”, each time it appears, and inserting in place thereof the following words:- select
94 board.

95 SECTION 21. Said charter is hereby further amended by striking out section 16 and
96 inserting in place thereof the following section:-

97 Section 16. The chief of the fire department shall be appointed by the select board and
98 shall receive such salary as the select board may from time to time determine, not exceeding the
99 amount annually appropriated therefor. The chief may be removed for cause by the select board
100 at any time after a hearing. The chief shall have charge of extinguishing fires in the town and the
101 protection of life and property in case of fire. The chief shall purchase, subject to the approval of
102 the select board, and keep in repair all property and apparatus used for and by the fire
103 department. The chief shall have and exercise all the powers and rights and be subject to all the
104 duties and liabilities conferred or imposed by law upon engineers in towns, except as herein
105 provided, and shall appoint a deputy chief and such officers and firefighters as the chief deems
106 necessary and may remove the same at any time for cause and after a hearing. The chief shall
107 have full and absolute authority in the administration of the department, shall make all rules and
108 regulations for its operation, shall report to the select board from time to time as it may require
109 and shall annually report to the town the condition of the department with the chief's
110 recommendations thereon. The chief shall fix the compensation of the permanent and call
111 members of the fire department, subject to the approval of the select board. In the expenditure of
112 money, the chief shall be subject to such further limitations as the town may from time to time
113 prescribe.

114 SECTION 22. Section 17 of said charter is hereby amended by striking out the words
115 "Board of Selectmen", each time they appear, and inserting in place thereof, in each instance, the
116 following words:- select board.

117 SECTION 23. Subsection (B) of said section 17 of said charter is hereby amended by
118 striking out the word "him", each time it appears, and inserting in place thereof, in each instance,
119 the following words:- the town counsel.

120 SECTION 24. The second paragraph of said subsection (B) of said section 17 of said
121 charter is hereby further amended by striking out the word “he”, each time it appears, and
122 inserting in place thereof, in each instance, the following words:- the town counsel.

123 SECTION 25. Said subsection (B) of said section 17 of said charter is hereby further
124 amended by striking out the word “his”, each time it appears, and inserting in place thereof, in
125 each instance, the following words:- the town counsel’s.

126 SECTION 26. The third paragraph of said subsection (B) of section 17 of said charter is
127 hereby amended by striking out the word “He” and inserting in place thereof the following
128 words:- The town counsel.

129 SECTION 27. Said charter is hereby further amended by striking out section 18 and
130 inserting in place thereof the following section:-

131 Section 18. The select board, elected as provided in section 2 shall appoint, as soon as
132 practicable, a town manager who shall be the administrative head of all departments of the town
133 government, the conduct of which is by the General Laws and by this act placed upon the select
134 board, except as provided otherwise in this charter. The town manager shall be subject to the
135 direction and supervision, and shall hold office at the will of, the select board and shall be a
136 person specially fitted by education, training or experience to perform the duties of the office.
137 The town manager shall be appointed without regard to political beliefs and may or may not,
138 when appointed, be a resident of the town or the commonwealth. The town manager shall be
139 responsible for the efficient administration of all departments within the scope of the town
140 manager’s duties. Before entering upon the duties of the town manager’s office, the town
141 manager shall be sworn to the faithful and impartial performance thereof by the chair of the

142 select board, or by the town clerk, or by a justice of the peace. The town manager shall execute a
143 bond in favor of the town for the faithful performance of the town manager duties in such sum
144 and with such surety or sureties as may be fixed or approved by the select board.

145 SECTION 28. Section 19 of said charter is hereby amended by striking out the words
146 “Board of Selectmen” and inserting in place thereof the following words:- select board.

147 SECTION 29. Said section 19 of said charter is hereby further amended by striking out
148 the word “Selectmen”, each time it appears, and inserting in place thereof, in each instance, the
149 following words:- select board.

150 SECTION 30. Said section 19 of said charter is hereby further amended by striking out
151 the word “his”, each time it appears, and inserting in place thereof, in each instance, the
152 following words:- the town manager’s.

153 SECTION 31. Said section 19 of said charter is hereby further amended by striking out
154 the word “he”, each time it appears, and inserting in place thereof, in each instance, the following
155 words:- the town manager.

156 SECTION 32. Said section 19 of said charter is hereby further amended by striking out
157 the word “him”, each time it appears, and inserting in place thereof, in each instance, the
158 following words:- the town manager.

159 SECTION 33. Section 20 of said charter is hereby amended by striking out the word
160 “his”, each time it appears, and inserting in place thereof, in each instance, the following words:-
161 the town manager’s.

162 SECTION 34. Section 21 of said charter is hereby amended by striking out the word
163 “Selectmen”, each time it appears, and inserting in place thereof, in each instance, the following
164 words:- select board.

165 SECTION 35. Said section 21 of said charter is hereby further amended by striking out
166 the word “his” and inserting in place thereof the following words:- the town manager’s.

167 SECTION 36. Said section 21 of said charter is hereby further amended by striking out
168 the word “him” and inserting in place thereof the following words:- the town manager.

169 SECTION 37. Section 22 of said charter is hereby amended by striking out the word
170 “Selectmen”, each time it appears, and inserting in place thereof, in each instance, the following
171 words:- select board.

172 SECTION 38. Section 24 of said charter is hereby amended by striking out the word “he”
173 and inserting in place thereof the following words:- the town clerk.

174 SECTION 39. Section 25 of said charter is hereby amended by striking out the words
175 “Board of Selectmen”, each time they appear, and inserting in place thereof, in each instance, the
176 following words:- select board.

177 SECTION 40. Section 26 of said charter is hereby amended by striking out the words “to
178 succeed himself” and inserting in place thereof the following words:- in the recall election.

179 SECTION 41. Said section 26 of said charter is hereby further amended by striking out
180 the word “he” and inserting in place thereof the following words:- the officer.

181 SECTION 42. Said section 26 of said charter is hereby further amended by striking out
182 the word “his” and inserting in place thereof the following words:- the officer’s.

183 SECTION 43. Said charter is hereby further amended by striking out section 27 and
184 inserting in place thereof the following section:-

185 Section 27. The incumbent shall continue to perform the duties of the incumbent's office
186 until the recall election. If then re-elected, the incumbent shall continue in office for the
187 remainder of the unexpired term subject to recall as before, except as provided in section 30. If
188 not re-elected in the recall election, the incumbent shall be deemed removed upon the
189 qualification of the incumbent's successor and the successor shall then hold office for the
190 remainder of the unexpired term. If the successor fails to qualify within 5 days after receiving
191 notification of election, the incumbent shall thereupon be deemed removed and the office vacant.

192 SECTION 44. Section 29 of said charter is hereby amended by striking out the word "he"
193 and inserting in place thereof the following words:- the officer.

194 SECTION 45. Section 30 of said charter is hereby amended by striking out the word
195 "him" and inserting in place thereof the following words:- such person.

196 SECTION 46. Section 31 of said charter is hereby amended by striking out the words
197 "Board of Selectmen" and inserting in place thereof the following words:- select board.

198 SECTION 47. Section 32 of said charter is hereby amended by striking out the word
199 "Selectman" and inserting in place thereof the following words:- select board member.

200 SECTION 48. Said section 32 of said charter is hereby further amended by striking out
201 the word "Selectmen" and inserting in place thereof the following words:- select board.

202 SECTION 49. Said section 32 of said charter is hereby further amended by striking out
203 the word “his” and inserting in place thereof the following words:- such town manager’s,
204 member’s, trustee’s or other elected or appointed officer’s or employee’s.

205 SECTION 50. Section 33 of said charter is hereby amended by striking out the word
206 “Selectmen”, each time it appears, and inserting in place thereof, in each instance, the following
207 words:- select board.

208 SECTION 51. Section 34 of said charter is hereby further amended by striking out the
209 word “Selectmen” and inserting in place thereof the following words:- select board.

210 SECTION 52. Said section 34 of said charter is hereby further amended by striking out
211 the word “his” and inserting in place thereof the following words:- their.

212 SECTION 53. Section 36 of said charter is hereby amended by striking out the word
213 “Selectmen”, each time it appears, and inserting in place thereof, in each instance, the following
214 words:- select board.

215 SECTION 54. Notwithstanding any general or special law to the contrary, the executive
216 body of the town of Middleborough, previously known as the board of selectmen, shall be
217 known as the select board and shall have all of the powers and authority and shall be subject to
218 all duties and requirements applicable to boards of selectmen under any general or special law.

219 SECTION 55. This act shall take effect upon its passage.