

CHANGING MASSACHUSETTS LOCAL GOVERNMENT STRUCTURE

Massachusetts state law provides several routes for cities and towns to make changes in the organizational structure of local government:

- election of a charter commission and subsequent adoption of the commission's proposed charter;
- a petition for enactment of special municipal legislation; and
- using bylaws and "permissive" legislation to enact structural change

Each route is described briefly below.

HOME RULE CHARTER COMMISSION: Over 130 charter commissions have been elected since the adoption of the Home Rule Amendment to the Constitution of the Commonwealth of Massachusetts in 1966. The procedures for creation of a charter commission are outlined in Massachusetts General Laws, (M.G.L.) Chapter 43B (see DHCD publication, *The Home Rule Amendment and the Home Rule Procedures Act**). In summary, any city or town, upon petition of 15% of the registered voters may vote to elect a nine-member charter commission to prepare a charter. A charter serves as the basic framework of the government structure, identifying officials to be elected and appointed, size and composition of the legislative body, appointment authority, operating and capital budget preparation, organization of departments, etc. A charter commission has a maximum of 18 months to prepare a proposed charter, but may choose to complete the task in 10 months. Following its election, a commission considers the options for changing local government structure, and seeks participation from the residents via public meetings, public hearings, publication of a preliminary report, and issuance of a final report. The requirements for public participation are described in Chapter 43B. To take effect, a charter proposal must be adopted by a majority of the voters at a municipal election. In towns, some charter commissions follow a 10 month schedule, and present a charter proposal to the voters at the annual election one year following the commission's election. If the commission chooses to follow the 18 month schedule provided in the law, the charter proposal would be presented to the voters at the municipal election two years following the election of a commission. (This procedure is most applicable to cities with biennial elections.)

The election of a commission, the preparation of a charter, and the submission of a proposal to the voters is a major undertaking; most towns make one or more significant changes in their structure, including, but not limited to:

- create a general management position (town administrator, town manager, etc.)
- change elected boards, commissions, and officials to appointed status
- establish or consolidate local departments; include enabling provisions to allow organizational changes as circumstances require
- establish budget and capital plan procedures

The DHCD publication, *Summary of Home Rule Charter Provisions in Massachusetts Municipalities*, highlights the major features of charters.

SPECIAL MUNICIPAL LEGISLATION: Prior to the adoption of the Home Rule Amendment, the most comprehensive changes in local government were made by means of a petition for special legislation (the "special act"). Prior to 1966, towns used the special act route to adopt "special act charters." Towns using this route to create the selectmen-town manager form of administration included Norwood, Middleborough, Holden, Wilmington, and Danvers. This option remains available today and has been used in approximately 35 communities, including Westford, Great Barrington, Lee, Lenox, Ashburnham, Sheffield, and Yarmouth.

The procedures governing special act adoption are:

1. passage by majority vote of warrant article or resolution proposing the special legislation
2. petition to the General Court (state legislature) to enact the proposed legislation
3. approval of the petition by state House of Representatives and state Senate
4. signing by the Governor

In some instances, the petition may require that the act become effective only upon acceptance by a majority of voters at the next regular municipal election (sometimes referred to as ratification). In other instances, the act may contain a certain date when the provisions take effect, or the act may state that its provisions become effective upon passage. Municipalities can be guided by the Home Rule Amendment that defines changes in

the legislative body, chief executive, or town manager as requiring the election of a charter commission, and a ballot vote on recommended changes.

Communities can also use the special act route to make more discrete changes -- e.g., combining the positions of an appointed collector and treasurer, changing an elected board or commission to an appointed one, creating a consolidated department, and adopting recall provisions.

USING BYLAWS AND PERMISSIVE LEGISLATION (*review options with counsel prior to proceeding*):

Towns may accomplish some structural, administrative, and organizational changes through adoption of bylaws. In several management areas, notably personnel administration, there have been recent efforts to adopt comprehensive bylaws. Other towns have used bylaws to encourage coordination among related offices (e.g., all those with financial duties). Also, the Massachusetts General Laws provide some organizational options for communities through “permissive” or enabling legislation, such as:

- **Chapter 41, section 1B** (enacted in 1997) allows a vote of town meeting followed by a ballot vote at the annual town meeting/election to change certain elected positions to appointments of the board of selectmen (applies to clerk, treasurer, tax collector, assessors, auditor, highway surveyor, sewer commissioners, road commissioners, tree warden, constables, boards of health). Elected officials in office at the time of such vote would complete their terms before the appointment provisions took effect. (Note: Section 1B does not apply to boards of selectmen or school committees, which must remain elected.)

- **Chapter 41, section 21** allows selectmen to act as certain offices (Water and Sewer Board, Water Commission, Water and Municipal Light Commissioners, Municipal Light Board, Sewer Commissioners, Park Commissioners, Board of Public Works, Board Health, Board of Assessors, Commission on Public Safety).

For Chapter 41, Section 1B and Section 21, the question/questions of authorizing the board of selectmen to appoint particular offices or multiple member bodies must be placed on the ballot at an annual election. The question(s) may be placed on the ballot by a vote of the town meeting held at least sixty days before the annual town meeting. For Section 21, the question(s) authorizing selectmen to act as certain boards may be also be placed on the ballot upon petition by 10 per cent of qualified voters and filed with the selectmen at least 60 days before the annual town meeting.

- **Chapter 41, section 2** sets out a procedure for increasing or decreasing the number of members of elected boards (*not applicable to boards of selectmen -- see MGL, c. 43B, section 13*).

- Selectmen may be granted the authority to appoint cemetery commissioners, chiefs of police and fire departments, assessors, superintendent of streets, or board of health. (see also **Chapter 41, section 21**)

Other enabling options include:

- Appointment of assessors by the selectmen (**Chapter 41, section 25**)

- Combining the positions of treasurer and collector. The town may vote to authorize the treasurer to act as collector. (**Chapter 41, section 1**).

- The town clerk may be appointed town accountant, if he/she holds no other office involving the disbursement or receipt of funds. (**Chapter 41, section 55**)

- **Chapter 40N** allows the establishment of a water and sewer commission as a body corporate and politic.

- **Chapter 43C** provides a procedure for creating three consolidated departments -- finance, community development, and inspections. Chapter 43C defines the features of bylaws establishing these departments.

Any procedural option under consideration should be reviewed by local legal counsel prior to proceeding. *Cities and towns are guided by the Home Rule Amendment, which defines changes in the legislative body, chief executive or town manager as requiring either adoption/revision of a home rule charter or enactment of special legislation.*