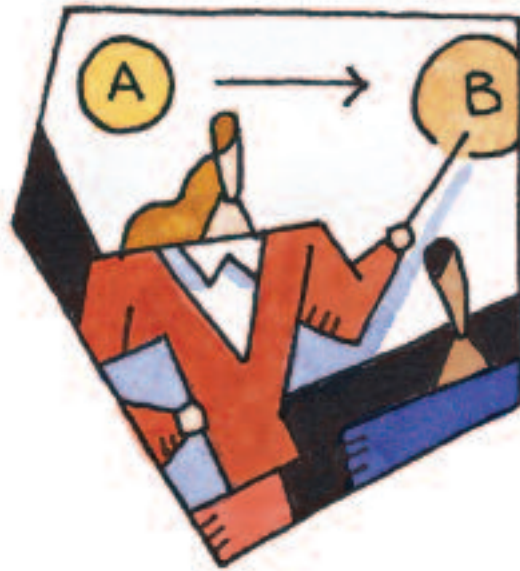


SEVERAL OPTIONS EXIST FOR

Changing Local Government Structure



BY MARILYN CONTREAS

What prompts a community to examine its local government structure? There can be as many reasons as there are cities and towns, but some of the catalysts might include the following:

- Retirement of key personnel
- An inability to attract candidates to serve in either elected or appointive office
- A perception that municipal departments are not communicating or coordinating functions as they should
- An increase in population and the resultant increase in service demands
- Poor town meeting attendance
- A need for greater oversight of financial matters and service delivery

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A board of selectmen may appoint an ad hoc committee (e.g., a “town government study committee”), or the mandate may come from town meeting, with the moderator appointing such a committee. These examinations may be specific (“Do we need a town administrator?” “What are the pros and cons of establishing a consolidated finance department?”) or more general (“examine town government structure and make recommendations”). Whatever the catalyst, and whatever the scope of the examination, local officials will need to know the parameters for local government structural change.

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

- Using bylaws and “permissive” legislation to enact structural change
- Election of a charter commission and subsequent adoption of the commission’s proposed charter
- A petition for enactment of special municipal legislation

These vehicles can be used for a variety of structural changes, including but not limited to:

- Changing an office from elected to appointed status
- Consolidating like functions (e.g., public works, finance) in a single department
- Establishing the position of town administrator

Some structural changes can be accomplished *only* by a home rule charter or special act charter, such as:

- Changing the size, composition or term of the legislative body
- Changing the term of the chief executive
- Authorizing town meeting to make certain future structural changes by bylaw, ordinance or adoption of an administrative code
- Assigning certain powers and duties to the town manager or administrator

Bylaws and Permissive Legislation

Towns may accomplish some structural, administrative and organizational changes through adoption of enabling legislation and implementing bylaws. Enabling or

“permissive” legislation gives communities the authority to adopt a state law in order to accomplish a structural change; it is optional, in that communities determine when and if the law is responsive to their plans for structural change.

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

In a Nutshell: Routes for Changing Local Government

Bylaws and “Permissive” Legislation

- Can be used to change certain elected positions or boards to appointed; allow selectmen to act as certain offices; or create position of town administrator
- Changes require town meeting or town election vote

Home Rule Charter

- Elected charter commission prepares new charter
- Charter defines structure of local government
- New charter generally proposes significant changes to structure, such as creation of town manager or administrator position, changing boards or commissions, or consolidating or creating departments
- Requires approval at annual town election

Special Municipal Legislation

- Town submits proposed structural change to Legislature
- Requires legislative approval
- Can be used to create town manager or administrator position

surveyor, sewer commissioners, road commissioners, tree warden, constables, and boards of health). Elected officials in office at the time of such vote would complete their terms before the appointment provisions took effect. (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 of health, board of assessors, commission on public safety).

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Interesting Local Government Facts

- Norwood was the first town to secure passage of a special act that included a town management position ("general manager")
- Andover is the largest town with an open town meeting.
- Framingham is the largest town with a representative town meeting.
- The largest town meeting membership is in Fairhaven; the smallest is in Saugus.
- Three towns have replaced representative town meeting by returning to open town meeting: Seekonk, Athol and Webster.
- Wakefield is the only town with a seven-member board of selectmen.



For Chapter 41, sections 1B and 21, questions that would authorize the board of selectmen to appoint particular offices or multiple-member bodies must be placed on the ballot at an annual election. Questions may be placed on the ballot by a vote of a town meeting held at least sixty days before the annual town meeting. Questions authorizing selectmen to act as certain boards, under Section 21, may be placed on the ballot upon petition by ten percent of qualified voters, with the petition being filed with selectmen at least sixty days before the annual town meeting.

Town officials may be interested in looking at these options if individuals in these positions are retiring and no one is interested in seeking such an elective office, but would be willing to serve in an appointed capacity. If the town is growing or functions are expanding, but the town does not yet see a need to create new boards and commissions, the "act as" provisions can provide some direction until the town is ready to create the individual boards. Towns should consider that such arrangements may need to be interim in nature, given the responsibilities and regulatory enforcement duties of some of these boards (e.g., board of health, water and sewer board). Town officials are always advised to review options with municipal counsel prior to proceeding.

Selectmen also may be granted the authority to appoint cemetery commissioners, police and fire chiefs, assessors, superintendents of streets, or boards of health. Communities may want to use this option if no one is seeking elective office, but the town wishes to retain these offices as separate entities. This option also requires a town meeting vote.

Other enabling or "permissive" options include:

- Establishing the position of town administrator (Ch. 41, Sect. 23A): For several decades, this was the most popular route for establishing administrative positions. (Referenced in the statute as "executive secretary" when first enacted in 1956; it was amended in 1996 to insert the term "town administrator," a more common title within the profession.) The statute allows the board of selectmen to delegate certain duties of the board to a town administrator. Use of this option is

now seen most often in communities that have not undertaken any major actions—such as a home rule or special act charter—to centralize local government, and where there are more elected offices for administrative positions such as treasurer, collector and clerk.

- Appointment of assessors by the selectmen (Ch. 41, Sect. 25)
- Combining the positions of treasurer and collector (Ch. 41, Sect. 1). The town may vote to authorize the treasurer to act as collector.
- Appointing town clerk as town accountant, if he or she holds no other office involving the disbursement or receipt of funds (Ch. 41, Sect. 55)

For larger, more multi-faceted operations, towns may want to examine the following options:

- 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. The town of Hanover and the city of Chelsea are among the communities that have used Chapter 43C to accomplish department consolidation.

Home Rule Charter

Communities seeking to make more comprehensive changes in the local government charter may elect a charter commission of nine persons to prepare a home rule charter for the voters' consideration. The option of preparing a home rule charter became available in 1966 with the adoption of the Home Rule Amendment in the Massachusetts Constitution. Massachusetts does not prescribe the form of government based on a community's population, tax base or other category. The modest parameters established by the state's constitution initially in 1821, and modified to include the limited town meeting option in 1920, are as follows:

- Towns above 12,000 population may adopt a city form of government
- Towns above 6,000 population may adopt a limited (representative) town meeting form of government
- Towns below 6,000 population must operate with an open town meeting

Further, there are several statutes referencing “town manager” or “town administrator,” but no statutory definition of these terms. The position is usually defined by the home rule or special act charter creating or revising the position, or in general terms in a town bylaw if a town administrator is adopted pursuant to Chapter 41, Section 23A.

Historically, the Legislature demonstrated greater interest and concern in how cities were governed, providing four plans of government that could be adopted by cities in 1915. Colloquially, these plans are known as Strong Mayor, Weak Mayor, Commission, and Council-Manager (Plans A, B, C, and D). Plan E, a council-manager variation with voting by proportional representation, was added to the statute in 1938. Plan F, allowing for the partisan (party identification) election of a mayor and council, was added in 1959. After passage of the Home Rule Amendment in 1966, the Legislature decided that the provisions of Chapter 43 for adopting these plans could no longer be used. Thus, there are now no “model” plans for either city or town government.

More than 130 home rule charter commissions have been elected since the adoption of the Home Rule Amendment in 1966. The procedures for creation of a charter commission are outlined in Chapter 43B of the Massachusetts General Laws. In summary, any city or town, upon petition of fifteen percent 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, the size, term and composition of the legislative body, appointment authority, operating and capital budget preparation, and organization of departments. Many communities with home rule charters have put their charters on the city or town Web site, where they are easily accessible.

A charter commission has a maximum of eighteen months to prepare a proposed charter, but may choose to complete the task in ten months. Following its election, a commission considers the options for changing local government structure and seeks participation from residents via public meetings, 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 voters at a municipal election.

Home Rule Charters

Adopted With Representative Town Meeting:

Auburn
Billerica
Chelmsford
Dedham
Dartmouth
Falmouth
Natick
Reading
Stoughton
Walpole
Winchester

Adopted With Open Town Meeting:

Acton
Acushnet
Ashland
Athol
Bedford
Bellingham
Blackstone
Bourne
Chatham
Dracut
Eastham
Easton
Grafton
Harwich
Hudson
Longmeadow

Lunenburg
Lynnfield
Mansfield
Marshfield
Mashpee
Maynard
Medfield
Middleton
Millbury
Millis
Nahant
North Andover
Northborough
Northbridge
North Reading
Norton
Norwell
Orleans
Oxford

Provincetown
Rockland
Salisbury
Scituate
Seekonk
Stow
Sturbridge
Sutton
Townsend
Truro
Uxbridge
Wakefield
Wareham
Webster
Wellfleet
Westborough
Westwood
Winchendon

Note: Charters for Millis and Rockland did not originally contain provisions for a management position.

In towns, some charter commissions follow a ten-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 eighteen-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 approach responds 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 proposing home rule charters include one or more significant changes in their structure, including but not limited to:

- Creation of a general management position (town administrator, town manager, etc.)

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- Changing elected boards, commissions and officials to appointed status
- Establishing or consolidating local departments (including enabling provisions to allow organizational changes via bylaw or ordinance adoption as circumstances require)
- Establishing procedures for preparation of the operating budget and capital plan
- Providing “citizen safeguard” measures such as initiative, referendum and recall

The Department of Housing and Community Development is available to provide technical assistance to charter commissions. The department serves as a repository for all proposed home rule charters and prepares several publications to guide commissions in the charter preparation process. Department staff have also participated in meetings and workshops on this topic throughout the state.

Towns that Used Special Act Charters to Create Town Manager or Administrator Position

Abington	Framingham	Middleborough	Sudbury
Amherst	Great Barrington	Needham	Swampscott
Andover	Holden	Norwood	Tewksbury
Arlington	Hull	Plymouth	West Boylston
Ashburnham	Ipswich	Sandwich	Westford
Becket	Lakeville	Saugus	Weston
Concord	Lee	Sheffield	Williamstown
Dalton	Lenox	Shrewsbury	Wilmington
Danvers	Lexington	Spencer	Yarmouth
Foxborough	Medway	Stoneham	

Note: Weymouth and West Springfield had special acts for town government prior to adopting a home rule charter providing for a city form of government. Acton replaced its special act with a home rule charter. Amherst, Danvers and Framingham have had more than one special act. Swampscott’s special act is an extensive revision of its home rule charter.

Special Acts Used to Create Town Manager or Administrator Position

Brookline	Cohasset	Manchester-	Norfolk
Burlington	Duxbury	by-the-Sea	Somerset
Carver	Holliston	Nahant	Wayland

Note: Dartmouth replaced special act via home rule charter adoption. Hopedale repealed its special act in 1997.

Special Municipal Legislation

Prior to the adoption of the Home Rule Amendment in 1966, the most comprehensive changes in local government were made by means of a petition for special legislation (a “special act charter”). This option remains available today and has been used in approximately forty communities. (See list, below.) Another eleven have secured passage of special acts to create the position of town manager or town administrator.

The following is the procedure governing special act adoption:

1. Passage, by majority vote at town meeting, of a warrant article or resolution proposing the special legislation
2. Petition to the Legislature to enact the proposed legislation
3. Hearing by assigned committee of the Legislature
4. Approval of the petition by House of Representatives and Senate
5. Signing of special legislation by the governor

This process may be completed in as little as one year. 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.

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, or adopting recall provisions).

The Legislature’s Web site (www.mass.gov/legis) includes the manual for preparing proposed legislation and provides specific guidance regarding the submission of “home rule petitions” (special municipal legislation).

Any procedural option for structural change under consideration should be reviewed by municipal counsel prior to proceeding. Municipalities may be guided by the Home Rule Amendment, which defines changes in the legislative body, chief executive or town manager as requiring adoption or revision of a home rule charter or enactment of special legislation. 🌟