



MEMORANDUM

TO: Town of Lee – Board of Selectmen
FROM: Special Act/Charter Review Committee
Dennis Mountain, Sue Kelley, John Davidson, John Graziano, and Janet Warner
DATE: January 13, 2020
SUBJECT: Final Report

This Special Act / Charter Review Committee met five times since being appointed on September 3, 2019. We thoroughly reviewed the town's current special act (Chapter 471 of the Acts of 1990) as provided by the current town administrator, Chris Ketchen. The following is a synopsis of our meetings, followed by the committee's recommendations. Also attached to this report you will find a copy of the original charter including highlighted areas with our recommended changes. Additionally, you will notice sidebar comments accompanied by brief explanations. Finally, you will find a modified "clean" copy of what our recommendations would look like in a new charter.

Sept. 12, 2019

The process for our review involved voting for a "chair" (Janet Warner) and reading the entire special act aloud, section by section, placing a "hold" on items any of the members wanted to revisit with a brief explanation as to why.

Upon completion of this initial task, the committee requested that Mr. Ketchen provide us with several supporting documents related to our current form of government.

Sept. 26, 2019

The committee reviewed the documents we had requested: Town Clerk Records Related to Appointed Positions, The Intermunicipal Agreement with the Town of Lenox for Shared Chief Administrative Officer (CAO), as well as Shared Assistant Chief Administrative Officer (CAAO), Chapter 155 of the Acts of 1991, and DLS Guidance Documents Related to Governance.

We then started discussing items that were put on "hold" from our first meeting.

Oct. 17, 2019

We continued to review and started to make recommendations for any changes we thought appropriate to the Special Act

November 21, 2019

This meeting involved careful recommendation review and preparation to present to the Selectmen.

December 5, 2019

The committee met one final time to give more input on Section 4. It is this committee's recommendation that the Selectmen review the wording of Section 4 with town council if you choose to make or consider this change.

The Special Act / Charter Review Committee understands that we are making recommendations to the Lee Selectmen for your review and know that any final decisions lie with you and the Town of Lee Representatives.

Thank you for this opportunity to give input and for all you do for the Town of Lee.

Recommendations:

Replacing references of “Board of Selectmen” to “Select Board” in the full document.

Replacing references of “he” to “they” and / or other appropriate pronouns

Section 4: A member of the Select Board, Finance Committee, or any other town employee shall be precluded from serving in any elected position in the town with the exception of town meeting representative. Rationale: Conflict of interest

5: Regarding any Town Administrator Search; Replace ICMA Newsletter with The Beacon and MMA website

Section 9: Delete all wording after “mailing address” Rationale: As per contract

Section 10: Regarding permanent positions made by the town administrator shall become effective on the FIFTH business day instead of fifteenth business day

Section 11: See side notes on 11 a-q on highlighted report

Regarding town administrator shall be chief “financial” officer, eliminating the word “fiscal”

Section 11d: Change to 7 days’ notice

Section 11 e: Remove (redundant)

Section 11g: In reference to rental procedures: give authority solely to Select board

Section 11i: Remove (redundant)

Section 11m: Town administrator accessibility and availability: add “or designee”

Section 11n: Delete quarterly reporting requirement

Sections 11p Remove

Sections 13-17 Remove (not applicable)

**Chapter 471. AN ACT ESTABLISHING A
SELECTMEN-ADMINISTRATOR FORM OF
GOVERNMENT IN THE TOWN OF LEE.**

Be it enacted, etc., as follows:

SECTION 1. ~~The voters of the town of Lee shall, in accordance with any applicable general or special law or by law or vote of the town, continue to elect the following: (a) town meeting members, (b) moderator, (c) board of selectmen, (d) school committee members, (e) housing authority, (f) assessors, (g) planning board members, (h) community development corporation members, (i) town clerk, (j) town treasurer, (k) tax collector, (l) board of health, (m) constables.~~

~~The acceptance of this act shall not affect the term of office of any such elected official or elected member of such board, committee, or authority. Every other elective office, board, committee, or commission of the town shall become appointive as hereinafter provided, any other provision of law to the contrary notwithstanding. The term of office of any person elected to any office, board, committee, or commission existing as an elected office at the time of the acceptance of this act and having become appointive hereunder, shall continue until the term for which that person was elected shall have expired, and until the appointment and qualification of his successor.~~

The powers, duties and responsibilities of elected officials shall be as now or hereafter provided by applicable provisions of any general law, special law, by-law or vote of the town, except as otherwise expressly provided herein.

Notwithstanding the election by the voters of the town of the officers named in this section, such officers shall be available to the town administrator for consultation, conference and discussion on matters relating to their respective offices.

SECTION 2. ~~The board of selectmen~~ Select Board shall consist of three members elected by the voters of the town. ~~Selectmen~~ Board members in office at the time of the approval of this act shall serve until the term of which they were elected shall have expired.

SECTION 3. ~~The board of selectmen~~ Select Board shall appoint town counsel, members of all appointed multi-member boards, committees and commissions except those appointed by the moderator and the town administrator as herein provided.

The moderator shall appoint the finance committee, as provided by by-law, and such committees and officers as ~~he~~ the moderator may now or hereafter be directed to appoint by any applicable general law, special law, by-law or vote of the town meeting.

SECTION 4. A member of the Select Board, Finance Committee, or any other Town employee shall be precluded from serving in any elected position in the town, with the exception of Town Meeting Representative. A member of the board of selectmen, or the finance committee shall during the term for which he was elected or

Comment [CK1]: Remove title from previous special act. Legislature will provide new title and number for revised special act

Comment [CK2]: This section applies to the transition from the prior form of government as it existed in 1990. Not applicable in 2020.

Comment [CK3]: The committee proposes to change the name of the board from "Board of Selectmen" to "Select Board". This change is reflected throughout the revised document

Comment [CK4]: The Committee recommends that Select Board members be precluded from holding other positions of Town employment.

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~~appointed be ineligible either by election or appointment to hold any other compensated town office, other than that of town meeting member. Nothing in this section shall preclude the members of the board of selectmen from serving on appointed ad hoc committees.~~

~~SECTION 5. The board of selectmen~~Select Board shall, by unanimous vote, appoint, as soon as practicable, for an indefinite term, a town administrator who shall be qualified by education, training and previous full-time experience to perform the duties of the office. In its search for a town administrator, the ~~board of selectmen~~Select Board shall advertise in the ~~International City Management Newsletter or similar professional publication The Beacon and on the web site of the Massachusetts Municipal Association~~ and in at least one newspaper having statewide or regional circulation. The town administrator shall be appointed without regard to ~~his~~ political designation. ~~He~~They need not be a resident of the town or the commonwealth when appointed, but shall become a resident of Berkshire county during the first year of ~~his~~ appointment unless otherwise provided by the ~~board of selectmen~~Select Board. ~~He~~They shall have a college degree at the bachelor level and shall have had five years of full-time paid experience in a supervisory administrative position in the public sector. A masters degree may be substituted for not more than two years of such paid experience. No person holding elective office in the town with the exception of town meeting members shall, within three years of holding such office, be eligible for appointment as town administrator. Before entering upon the duties of ~~his~~the office, ~~he~~the town administrator shall be sworn to the faithful and impartial performance thereof by town clerk or a notary public. ~~He~~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 sureties as may be fixed or approved by the ~~board of selectmen~~Select Board, the cost of which shall be borne by the town.

~~SECTION 6. The town administrator shall receive such compensation for his~~their services as the ~~board of selectmen~~Select Board shall determine but it shall not exceed the amount appropriated therefor by the town.

~~SECTION 7. Any vacancy in the office of town administrator shall be filled as soon as possible by the board of selectmen~~Select Board. Pending the appointment of a town administrator or the filling of any vacancy, the ~~board of selectmen~~Select Board shall, within seven days, appoint an officer of the town or another suitable person to perform the duties of the office.

~~SECTION 8. The town administrator may designate, subject to the approval of the board of selectmen~~Select Board, by letter filed with the town clerk, an officer of the town, or another suitable person, to perform ~~his~~their duties during ~~his~~their temporary absence or disability. In the event of failure by the administrator to make such designation, the ~~board of selectmen~~Select Board may, by resolution, designate an officer of the town or another suitable person to perform the duties of the administrator until ~~he~~the town administrator shall return or ~~his~~their disability shall cease.

~~SECTION 9. The board of selectmen~~Select Board may remove the town administrator. At least thirty days before such proposed removal shall become effective, the ~~board of selectmen~~Select Board shall adopt at a public meeting and shall

Comment [CK5]: The Committee feels that these publications are more relevant to a TA search process than the ICMA Newsletter, which has fallen out of wider circulation.

Comment [CK6]: First use of a pronoun in reference to the TA. This and other references from this point forward are recommended to be gender-neutral or eliminated altogether.

file with the town clerk a written preliminary resolution of removal, a copy of which resolution shall be delivered to the town administrator in person or at the administrator's last known mailing address. ~~The administrator may, within seven days of service of such resolution, reply in writing to the resolution and may request a public hearing. If the town administrator so requests, the board of selectmen shall hold a public hearing not earlier than fourteen days nor later than twenty-one days after the filing of such a request. At such a public hearing, if any, otherwise at the expiration of thirty days following the filing of the preliminary resolution, the selectmen may adopt a final resolution of removal. In the preliminary resolution, the board of selectmen may suspend the administrator from duty, but in any case his salary shall continue to be paid during the period of consideration of the preliminary resolution and until thirty additional days after the vote of the final resolution.~~

Comment [CK7]: The Committee felt that this section could be part of the TA's contract, as opposed to being a legal requirement.

SECTION 10. The town administrator shall appoint all town officials whose appointment or election is not specifically provided for herein. The town administrator shall appoint with majority approval of the ~~board of selectmen~~ Select Board, and may remove with the majority approval of the ~~board of selectmen~~ Select Board, subject to the provisions of chapter thirty-one of the General Laws where applicable, all department heads, all officers and all subordinates and employees for whom no other method of appointment is provided in this act, except persons serving under other appointments made by representatives of the commonwealth. Appointments to permanent positions made by the town administrator shall become effective on the ~~fifteenth~~ fifth business day following the ~~day~~ the notice of appointment is filed with the ~~board of selectmen~~ Select Board, unless the ~~board of selectmen~~ Select Board shall, within that period, by a majority vote of the board, vote to reject any such appointment.

Comment [CK8]: The Committee felt that shortening the timeframe was more consistent with most communities.

Comment [CK9]: Fix typo

Any person appointed by the town administrator to any town office under the provisions of this act or ~~any~~ general or special law shall be eligible during the term of said office to hold any other town office except that the town accountant shall not be eligible to hold the position of town treasurer or town collector. The town administrator, subject to any applicable provision of the General Laws relating thereto, may, with the approval of the ~~board of selectmen~~ Select Board, assume the duties of any office which ~~he~~ the town administrator is authorized to fill by appointment, but shall receive no additional compensation for assuming the duties of any such additional office.

Comment [CK10]: Fix typo

SECTION 11. In addition to specific powers and duties provided in this act, the town administrator shall have the general powers and duties enumerated in this section:

(a) The town administrator shall attend all regular meetings of the ~~board of selectmen~~ Select Board except meetings at which ~~his~~ the town administrator's removal is being considered, and shall attend all town meetings and shall be permitted to speak when recognized by the moderator.

(b) The town administrator shall be the chief ~~fiscal~~ financial officer of the town. Warrants for the payment of town funds prepared by the town accountant in accordance with the provision of section fifty-six of chapter forty-one 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 but the ~~board of selectmen~~ Select Board shall approve all warrants in the absence of the administrator or in the event of a vacancy in the office of town administrator.

Comment [CK11]: The Committee recommend using the term "financial" as a more recognizable reference to the Town's CFO.

(c) The town administrator shall be the chief budget officer of the town, and shall prepare and submit to the ~~board of selectmen~~ Select Board, an operating and capital improvement budget, as provided by by-law.

(d) Except as otherwise provided by this act, the town administrator shall appoint upon merit and fitness alone, and, subject to the provisions of chapter thirty-one of the General Laws where applicable, may remove all officers and employees of the town; town officers and employees not subject to the provisions of said chapter thirty-one shall not be removed by him except on ~~ten seven~~ days notice in writing, ~~setting forth the cause of such removal, at will.~~

~~(e) The town administrator shall supervise and be responsible for the efficient administration of all departments, commissions, boards and officers, except the board of selectmen. He shall not, however, exercise any control over the discretionary power vested by statute in any such board, committee, commission or officer.~~

(f) The town administrator shall keep the ~~board of selectmen~~ Select Board fully advised as to the needs of the town and shall recommend to the ~~selectmen~~ board for adoption such measures requiring action by them or by the town meeting as ~~he~~ the town administrator may deem necessary or expedient.

~~(g) The town administrator~~ Select Board shall have jurisdiction over the rental and use of all town property.

~~(h) The town administrator shall be responsible for the purchase of all supplies and materials and equipment, except those intended for the school department or for the library, and shall approve the award of all contracts for all departments of the town. He may make purchases for departments not under this supervision only upon, and in accordance with requisitions duly signed by the heads of such departments.~~

~~(i) The town administrator shall administer, either directly or through a person or persons appointed by him in accordance with this act, all provisions of general and special laws applicable to the town, all by-laws and votes of the town, and all regulations established by the board of selectmen.~~

(j) The town administrator may, upon the request and with the approval of the ~~board of selectmen~~ Select Board, prosecute, defend, or compromise all litigation to which the town is party, and shall be the executive officer of a public employer in the town as defined in section one of chapter two hundred and fifty-eight of the General Laws pertaining to the processing of claims against the town.

(k) The town administrator shall be the agent of the ~~board of selectmen~~ Select Board for collective bargaining.

(l) 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 implementation of prior town meeting votes.

(m) The town administrator, ~~or designee~~, shall be accessible and available for consultation to boards, committees and commissions of the town, whether appointed or elected, and shall be responsive to their request for assistance.

~~(n) The town administrator shall keep full and complete records of his~~ the town administrator's office, and shall provide quarterly reports to the board of selectmen.

(o) The town administrator, with the unanimous approval of the members of the ~~board of selectmen~~ Select Board and in accordance with the provisions of this act and the

Comment [CK12]: The Committee recommend shortening the notice period for termination and changing the employment status of all non-contract employees to "at will"

Comment [CK13]: The Committee recommend removal of this paragraph as being redundant with any statutes that may govern the various boards, committees, etc.

Comment [CK14]: This is a redundant, statutory requirement of the position. The Committee recommends deleting it.

Comment [CK15]: The Committee recommend explicitly stating that the TA can appoint a designee to assist various boards, committees, etc. This change acknowledges the TA's time and knowledge limitations.

Comment [CK16]: The Committee recommend deleting this requirement. Bi-weekly presence at Select Board meetings is believed to be sufficient. If the Select Board believes that quarterly reports are needed, the board can task the TA with that assignment. However, it is not necessary for inclusion in a special act.

General Laws, may reorganize, consolidate or abolish departments or offices under his~~the~~ town administrator's direction and supervision, in whole or in part, may establish such new departments or offices as ~~he~~the town administrator deems necessary, and may transfer the powers and duties of one department or office to another.

~~(p) Notwithstanding the provisions of chapter four hundred and thirty eight of the acts of nineteen hundred and seventy, the town administrator shall be an ex officio member of the board of public works established by said act with all the privileges of membership, except the power to vote.~~

~~(mq)~~ The town administrator shall perform such other duties as may be required of him by by-law, by vote of the board of selectmen~~Select Board~~, or vote of the town meeting.

SECTION 12. The town administrator may without notice cause the affairs of any department under his~~the~~ town administrator's supervision or the job-related conduct of any officer or employee thereof to be examined. The town administrator shall have access to all town books and papers for information necessary for the proper performance of his~~their~~ duties.

~~SECTION 13. All laws, by laws, votes, rules and regulations, whether enacted by authority of the town or any other authority, which are in force in the town of Lee on the effective date of this act, or any portion or portions thereof, not inconsistent with the provisions of this act, shall continue in full force and effect until otherwise provided by other laws, by laws, votes, rules and regulations, respectively.~~

SECTION 14. No contract existing and no action at law or suit in equity, or other proceeding pending at the time this act is accepted, or at the time of revocation of such acceptance, shall be affected by such acceptance or revocation, except that under revocation any contract made by the town with the town administrator then in office shall be terminated upon such vote.

SECTION 15. No person in the permanent full time service or employment of the town shall forfeit his pay, grade or time in service. Each person shall be retained in a capacity as similar to his former capacity as is practical.

SECTION 16. This act shall be submitted for acceptance to the voters of the town of Lee at the annual town elections to be held in the year nineteen hundred and ninety one in the form of the following question, which shall be placed upon the official ballot: "Shall an act passed by the General Court in the year nineteen hundred and ninety, entitled An Act Establishing a Selectmen Administrator Form of Government in the Town of Lee be accepted?"

If a majority of the votes in answer to said question is in the affirmative, said act shall take effect, but not otherwise.

If this act is not accepted in the year nineteen hundred and ninety one, it shall again be submitted at the annual town election in the year nineteen hundred and ninety two, and if accepted shall take full effect but not otherwise.

SECTION 17. The town may vote to establish a charter commission for the purpose of considering the appointment or election of persons to the positions of clerk, treasurer, and collector, along with any other matters it may deem necessary. Said vote shall include directions for notice of public meetings to be held by the charter

Comment [CK17]: DPW staff support the administrative needs of the BPW and all meetings are open to the public. Therefore, there is no need for the TA to serve in an ex officio role.

~~commission, and shall set deadlines for the commission's findings and recommendations, and any other necessary directions to maximize public input in the charter commission's deliberations.~~

~~Approved December 29, 1990.~~

Comment [CK18]: These sections apply to the transition from the prior form of government as it existed in 1990. Not necessarily applicable in 2021.

Comment [CK19]: This will no longer be the operative date of the special act, if proposed changes are approved.