

HOUSE No. 4952

The Commonwealth of Massachusetts

PRESENTED BY:

Harold P. Naughton, Jr.

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act establishing a Board of Selectmen-Town Administrator form of government for the town of Berlin.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

Harold P. Naughton, Jr.

12th Worcester

Dean A. Tran

Worcester and Middlesex

HOUSE No. 4952

By Mr. Naughton of Clinton, a petition (accompanied by bill, House, No. 4952) of Harold P. Naughton, Jr., and Dean A. Tran (by vote of the town) that the town of Berlin be authorized to establish a board of selectmen-town administrator form of government in said town. Municipalities and Regional Government. [Local Approval Received.]

The Commonwealth of Massachusetts

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

An Act establishing a Board of Selectmen-Town Administrator form of government for the town of Berlin.

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 Town of Berlin, hereafter referred to in this Act as “Town” shall be
2 governed by this act. To the extent that this act conflicts with existing General Laws and special
3 acts, this Act shall govern.

4 SECTION 2. The executive powers of the Town shall be vested in the Board of
5 Selectmen, hereafter referred to in this Act as “Board”, who shall have all the powers given to
6 boards of selectmen by the General Laws, except as otherwise provided herein.

7 The Board shall serve as the chief goal-setting and policy-making agency of the Town.
8 The duties and responsibilities for day-to-day management of the Town shall be delegated to the
9 Town Administrator, hereafter referred to in this act as “Administrator.” The Board shall act
10 through the adoption of policy directives and guidelines, which shall be implemented by the
11 Administrator and the officers and employees appointed by, or pursuant to the authority of, the

12 Board. Individual members of the Board shall not purport to represent the Board or exercise the
13 authority of the Board, except when specifically authorized by the Board.

14 The Board shall:

15 (1) promulgate rules and regulations; and issue interpretations in order to implement
16 policies and to carry out its responsibilities under state law, Town by-laws, and this Act;

17 (2) exercise, through the Administrator, general supervision over all matters affecting the
18 interests or welfare of the Town;

19 (3) appoint the department heads, Town Counsel and joint appointments, except: (i) those
20 positions elected by the voters, (ii) those positions appointed by elected officials, and (iii) those
21 positions appointed by the Chief of the Fire & EMS Department of the Town; provided, that the
22 Board may make appointments to temporary posts and committees the Board creates for special
23 purposes; provided, further that the Board may make appointments for any position not
24 otherwise referenced in this paragraph; and provided, further that the Board may appoint any
25 open position in the Town, if the authorized appointing or hiring authority fails to fill a position
26 within ninety (90) days of a vacancy;

27 (4) have general administrative oversight of such boards, committees and commissions
28 appointed jointly or severally by the Board;

29 (5) serve as the licensing board and have responsibility over and authority for other quasi-
30 judicial functions provided by the General Laws and the Town By-Laws;

31 (6) issue all Town Meeting warrants;

32 (7) review the annual proposed budget submitted by the Administrator, make
33 recommendations with respect to the annual proposed budget as the Board deems advisable and
34 present the budget and recommendations to the Finance Committee of the Town for its review
35 and recommendations;

36 (8) appoint an Administrator who shall: (i) be a person with the executive and
37 administrative qualifications, especially fitted by education, training and experience, to perform
38 the duties of the office; and (ii) not have served in an elective office in the Town for at least
39 twelve (12) months prior to appointment; provided, that the Board may establish such additional
40 qualifications as it deems necessary and appropriate; provided, further that the identification and
41 screening of appropriate candidates shall be coordinated by a hiring committee that includes both
42 employees and residents of the Town; provided, further that the Administrator shall not be
43 required to be a resident of the Town or the Commonwealth at the time of appointment, nor at
44 any time during the period of such service; provided further, that the Administrator shall not be
45 subject to the Personnel By-Law of the Town, except as referenced in the Administrator's
46 employment contract; and provided further, that the Board may reappoint the Administrator;

47 (9) enter into an employment contract for a term of not more than three (3) years with an
48 Administrator for salary, fringe benefits and other conditions of employment, including but not
49 limited to: severance pay, reimbursement for expenses incurred in the performance of the
50 Administrator's duties, liability insurance, conditions of discipline, termination, dismissal and
51 reappointment, performance standards and leave;

52 (10) set the compensation for the Administrator; provided, however that the
53 compensation set by the Board shall not exceed an amount appropriated by the Town Meeting;

54 (11) designate a qualified person in the event of a temporary absence of the Administrator
55 for longer than twenty (20) working days, or in lieu of an appointee under Section 4.23, or in the
56 event of a vacancy in the position, to serve as Interim Administrator, provided that the
57 appointment of an acting Administrator shall be for a period not to exceed one hundred and
58 eighty (180) days, but one renewal may be voted by the Board not to exceed a second six (6)
59 month period, and further provided compensation for such person shall be set by the Board, and

60 (12) suspend or remove the Administrator, by a majority vote of the Board, at any time,
61 for cause following a formal procedure, including: (i) a written intent to suspend or dismiss, (ii) a
62 written response and (iii) a public hearing; provided, that the public hearing shall be completed
63 within thirty (30) days after the issuance of a written intent to suspend or dismiss, in accordance
64 with the terms of the Administrator's contract.

65 SECTION 3. The Administrator shall be the chief administrative officer and chief
66 financial officer of the Town and shall act as the agent for the Board. The Administrator shall be
67 responsible to the Board for coordinating and administering all Town affairs under the
68 jurisdiction of the Board, and all functions and activities for which the Office of Town
69 Administrator is given authority, responsibility or control by this special act, by-law, town
70 meeting vote, vote of the Board or otherwise. The Administrator's powers and duties shall
71 include those outlined in Sections 4 to 7, inclusive.

72 SECTION 4. The Administrator shall supervise, manage and coordinate the day-to-day
73 activities of all Town departments and employees under the jurisdiction of the Board and
74 coordinate all activities of said departments with the activities of other departments under the
75 jurisdiction of other elected officials, boards and commissions. The Administrator shall:

76 (1) consult and advise the Board regarding the Board's policies and implement those
77 policies;

78 (2) advise the Board as to the needs of the Town and recommend to the Board, other
79 elected Town officers and agencies such measures requiring action by said Board, other elected
80 Town officers and agencies or by the Town Meeting as the Administrator may deem necessary
81 or expedient. The Administrator shall keep the Board informed on issues affecting the
82 administration and governance of the Town, in a timely manner;

83 (3) attend all meetings of the Board, except when excused by the Board chair, provided
84 however that the absence of the Administrator shall in no way prevent the Board from meeting,
85 and consult with and advise the Board on all matters that come before the Board;

86 (4) attend all Town Meetings and advise the Town Meeting on all warrant articles within
87 the jurisdiction of the Board or the Administrator;

88 (5) attend Finance Committee meetings as necessary and keep the Finance Committee
89 informed on all matters under the jurisdiction of the Administrator that come before the
90 committee;

91 (6) manage, supervise and be responsible for the efficient administration of all
92 departments, commissions, boards and offices under the jurisdiction of the Board; provided,
93 however, that the Administrator shall not exercise any control over the discretionary power
94 vested by statute in any such board, committee, commission or officer;

95 (7) supervise and direct the activities of the Town's departments, boards, commissions
96 and officers under the jurisdiction of the Board on the effective date of this Act and other

97 departments, as may be assigned by general by-laws of the Town or any general or special law,
98 including this Act; provided, that for this purpose, the Administrator shall have authority to
99 require the persons so elected, or their representatives, to meet with the Administrator, at
100 reasonable times, for the purpose of effecting coordination and cooperation among all agencies
101 of the Town; provided, further that the Administrator shall have the right to attend and speak at
102 any meeting of any multiple member body;

103 (8) reorganize, abolish, consolidate or establish a department or position under the
104 Administrator's authority for more efficient use of Town resources, as the Administrator deems
105 appropriate, subject to the approval of the Board before implementation, and to additional
106 funding by Town Meeting as necessary;

107 (9) act as chief procurement officer for the Town, in accordance with Chapter 30B of the
108 General Laws, and appoint such assistant procurement officers as provided in said Chapter 30B;
109 establish and enforce procurement policies and guidelines in accordance with applicable state
110 laws; be responsible for purchasing all supplies, materials, services and equipment for the
111 departments under the jurisdiction of the Board; have the authority to award and sign contracts
112 that do not exceed fifty thousand dollars (\$50,000.00), commonwealth highway contracts, and
113 state and federal grants; provided, that a contract that exceeds fifty thousand dollars (\$50,000.00)
114 shall require the approval of the Board; provided further, that the Administrator shall have the
115 authority to sign a contract approved by the Board on behalf of the Town; and provided further,
116 that contracts and grants signed by the Administrator shall be promptly reported, in writing, to
117 the Board;

118 (10) keep a full and complete inventory of all Town property, both real and personal;

119 (11) administer the Town's insurance policies, including claims settlement; provided,
120 however, that all insurance contracts and claims settlements shall receive the approval of the
121 Board;

122 (12) manage and oversee the use, maintenance, repair, security and, with the approval of
123 the Board, regulate the rental for all the Town land and buildings that fall under the jurisdiction
124 of the Board, except for schools, libraries and lands held for conservation purposes; provided,
125 that other municipal boards may request that the Administrator coordinate the maintenance and
126 repair of the land and buildings under their jurisdiction;

127 (13) work with Town Counsel, with the approval of the Board, to prosecute, defend and
128 settle all litigation for or against the Town, subject to such appropriation as may be necessary to
129 effect settlement, except litigation involving only the school department or its officers and
130 employees;

131 (14) delegate, authorize or direct any employee appointed under the jurisdiction of the
132 Board to exercise any power, duty or responsibility which the Administrator is authorized to
133 exercise;

134 (15) be responsible for coordination of operational and strategic planning for the Town;

135 (16) keep complete records of the office of the Administrator and annually submit a full
136 report of the operations of the office to the Board, unless requested to do so more frequently by
137 the Board;

138 (17) respond to and coordinate local response to emergency situations in conjunction with
139 public safety officers;

140 (18) establish and maintain positive community relations with local organizations, groups
141 and residents and act as Town liaison with local, state, and federal agencies;

142 (19) receive and act on questions and complaints filed with the Board or the
143 Administrator and inform the Board of the status of the resolution as appropriate;

144 (20) serve as the Board's public relations officer, including the preparation of news
145 releases and acting as the Board's spokesperson when so authorized;

146 (21) prepare for the Board's review and approval the warrants for all town meetings, in
147 conjunction with Town Counsel as necessary, including any related ballot questions, to ensure
148 that they are proper and legal and that there are sufficient funds available for implementation;

149 (22) perform any other duties or tasks assigned by the Board, assigned by the Town
150 Meeting or mandated by applicable general or special law; and

151 (23) designate, during a temporary absence, with the approval of the Board, a qualified
152 administrative employee or officer, except a Board member, the Town Moderator, a member of
153 the School Committee or a member of the Finance Committee, to exercise the powers and
154 perform the duties of the Administrator for not more than twenty (20) working days, provided
155 that the delegation shall be made in writing and shall be filed with the Town Clerk and the
156 Board, provided further that the powers and duties of this temporary or acting administrator shall
157 be limited to exercising the authority of the Administrator with respect to matters not admitting
158 of delay including making temporary, emergency appointments or designations to Town office
159 or employment but not to make permanent appointments or designations.

160 SECTION 5. The Administrator shall exercise overall responsibility for human resources
161 for the Town including, but not limited to: authority for hiring, supervision, evaluation,
162 discipline and removal of Town employees under the jurisdiction of the Board. The
163 Administrator shall:

164 (1) assist the Personnel Committee in the implementation and administration of the
165 Personnel By-Laws of the Town and salary and classification plan;

166 (2) coordinate the recruitment and screening of suitable candidates for consideration and
167 appointment as department heads by vote of the Board; provided, that the Administrator shall
168 provide the Board with relevant material for the evaluation of not more than five (5) candidates;
169 provided further, that if the Board does not appoint any of the candidates, the Administrator shall
170 continue to present candidates until a candidate is appointed; and provided further, that any
171 department head may be removed by vote of the Board after consultation with the Administrator;

172 (3) appoint and remove individuals under the jurisdiction of the Board except for
173 department heads and Town Counsel, and except as may otherwise be provided by law;
174 provided, that the Administrator shall consult appropriately prior to appointing and provide
175 notice to the Board of the anticipated appointment and the terms and conditions of employment
176 for the appointment which the Board shall approve or disapprove within fourteen (14) days of
177 the notice; provided, further, that a failure of the Board to act within the fourteen (14) day period
178 shall be deemed approval of the appointment and the terms and conditions thereof; and provided
179 further, that the termination or removal of positions so appointed shall be subject to the same
180 appointment notice and approval requirements;

181 (4) assist all other hiring authorities in search, selection, and hiring processes for their
182 direct reports;

183 (5) recommend individuals to the Board for appointment to any open position in the
184 Town, if the authorized appointing or hiring authority fails to fill a position within ninety (90)
185 days of vacancy;

186 (6) be responsible for the supervision, management, evaluation and discipline of the other
187 Town employees under the jurisdiction of the Board, the annual performance evaluations of the
188 department heads and shall oversee the performance evaluation program conducted by the
189 department heads for employees within their respective departments;

190 (7) act on behalf of the Board in the grievance process pursuant to collective bargaining
191 agreements; provided that the Board may provide advice and guidelines to the Administrator;

192 (8) administer the Personnel By-Law and collective bargaining agreements entered into
193 by the Town and work with the Personnel Committee to develop and implement personnel
194 policies and procedures for all Town employees, except the school department; provided, that
195 with respect to the Fire and EMS Department, the authority granted to the Administrator in this
196 clause shall be subject to Section 42 of Chapter 48 of the General Laws;

197 (9) negotiate all collective bargaining agreements on behalf of the Town, except the
198 school department, with the approval of the Board; provided, that the Administrator may seek the
199 assistance of counsel if the Administrator deems it necessary to effect successful negotiations;
200 and provided further, that all final agreements shall be approved and executed by the Board;

201 (10) establish compensation packages for all Town employees under the jurisdiction of
202 the Administrator who are not subject to a collective bargaining agreement with the approval of
203 the Board and in conjunction with the Personnel Committee; provided, that such compensation
204 shall not exceed the amount appropriated by Town Meeting and shall be subject to all applicable
205 laws and by-laws; and

206 (11) have the power to inquire and make investigation, at any time, into the conduct and
207 operation of office or performance of duties of any officer or employee, department, board,
208 commission or other Town agency.

209 SECTION 6. The Administrator shall have the budgetary powers and responsibilities to:

210 (1) establish dates by which the proposed budget, revenue statement and tax rate
211 estimate are to be submitted to the Board;

212 (2) prepare and present annually to the Board detailed budgetary estimates of
213 amounts necessary for the administration of all Town boards, officers, committees, divisions and
214 departments in the ensuing fiscal year, including both capital and operating items, and upon
215 approval by the Board the Administrator shall present a requested proposed budget to the
216 Finance Committee;

217 (3) report on the probable amount required to be levied and raised by taxation to
218 defray all expenses and liabilities of the Town together with an estimate of the necessary tax rate;

219 (4) submit annually to the Board a five (5) year capital improvements program, or the
220 same as approved by a formal Capital Planning Committee, including: (i) a list of all capital
221 improvements and supporting data proposed to be undertaken during the next five (5) years; (ii)

222 cost estimates, methods of financing and recommended time schedule; and (iii) the estimated
223 annual cost of operating and maintaining any facility to be constructed or acquired;

224 (5) ensure that all operating and capital budgets under the direct control of the
225 Administrator are expended consistent with the relevant Town Meeting appropriation therefor;
226 and coordinate with the governing bodies of departments not under the direct supervision of the
227 Administrator to similarly ensure that their budgets are being expended consistent with law;

228 (6) approve all payroll and expense warrants for payment of town funds prepared by
229 the town accountant in accordance with Section 56 of Chapter 41 of the General Laws, and
230 advise the board of the same; in the event of a temporary absence of the administrator, the board
231 shall approve such warrants;

232 (7) seek out, prepare, coordinate and file applications for state, federal and private
233 grants; and

234 (8) ensure that the complete and full records of the financial activity of the Town are
235 maintained in accordance with state, federal laws and the Town by-laws and render quarterly
236 reports to the Board, unless requested more frequently.

237 SECTION 7. The Administrator shall have access to all municipal books, papers and
238 documents or information necessary for the proper performance of the duties of the
239 Administrator. The Administrator may, without notice, cause the affairs of any division or
240 department under the Administrator's supervision, or the conduct of any officer or employee
241 thereof, to be examined.

242 SECTION 8. All laws, by-laws, votes, rules and regulations, whether enacted by
243 authority of the Town or any other authority, that are in force in the Town on the effective date
244 of this Act and are not inconsistent with this act shall continue in full force and effect.

245 SECTION 9. No existing contract, action at law, suit in equity or other proceeding
246 pending on the effective date of this act shall be affected by this Act.

247 SECTION 10. This Act shall not impair the rights or obligations of any person holding a
248 Town office or employed by the Town on its effective date, except those duties assigned by this
249 Act to another officer or employer those duties that are subsequently assigned to another officer
250 or employee pursuant to this act. No person who continues in the permanent full-time service or
251 employment of the Town shall forfeit their pay, grade or time in service as a result of this Act.

252 SECTION 11. This act shall take effect upon its passage.