

SENATE No. 2161

Senate, September 21, 2017 -- Substituted by amendment (Senator Tarr) as a new draft for Senate, No. 2067

The Commonwealth of Massachusetts

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

An Act establishing a town manager in the town of West Newbury.

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. Chapter 270 of the acts of 1990 is hereby repealed.

2 SECTION 2. Notwithstanding any other general or special law, rule, regulation or by-
3 law to the contrary, there shall be a town manager in the town of West Newbury who shall have
4 the powers, duties and limitations described in this act.

5 SECTION 3. (a) Upon the effective date of this act, any person holding a position listed
6 in this section shall continue to hold the position until the expiration of that person's current
7 term, after which the registered voters of the town of West Newbury shall, in accordance with
8 any applicable laws, by-laws, votes of the town or inter-local agreements elect the following:

9 (i) members of the board of selectmen;

10 (ii) a town moderator;

11 (iii) the West Newbury members of the Pentucket School Committee;

12 (iv) members of the board of trustees of the G.A.R. Memorial Library;

13 (v) members of the board of assessors;

14 (vi) members of the board of health;

15 (vii) members of West Newbury housing authority;

16 (viii) members of the planning board;

17 (ix) members of the board of parks and recreation;

18 (x) members of the board of water commissioners; and

19 (xi) constables.

20 (b) Except as otherwise provided in this act, the elected and appointed officials of the
21 town of West Newbury shall have the powers, duties and responsibilities set forth by applicable
22 General Laws, special acts, town by-laws and votes of the town meeting.

23 (c) The officers elected under subsection (a) shall be available to the town manager and
24 the board of selectmen for consultation, conference and discussion on matters relating to the
25 officers' respective offices. The town manager and the board of selectmen may require such
26 officers to prepare necessary reports for the administration of the town's government.

27 SECTION 4. (a) The executive powers of the town of West Newbury shall be vested in
28 the board of selectmen, which shall have all the powers given to boards of selectmen in the
29 General Laws.

30 (b) The board of selectmen shall consist of 3 members elected by the voters of the town.
31 Each member of the board of selectmen shall serve for a terms of 3 years or until a successor
32 takes office. The board of selectmen shall annually elect a chairperson and a clerk from among
33 its members.

34 (c) The board of selectmen shall serve as the chief goal-setting and policy-making body
35 of the town and shall not normally administer the day-to-day affairs of the town. The board of
36 selectmen shall set guidelines and policy directives that are to be implemented by the town
37 manager and by other officers and employees appointed by or under its authority. The board of
38 selectmen shall have the power and authority to enact rules and regulations to implement
39 policies, issue directives and issue interpretations of the town's rules and regulations.

40 (d) The board of selectmen shall exercise, through the town manager, general supervision
41 over all matters affecting the interests or welfare of the town.

42 (e) The board of selectmen shall appoint the town manager, the town counsel, the chief of
43 police, the independent auditor, the town accountant, the assistant or special counsel and the
44 executive administrator to the board of selectmen by a majority vote with the full board present.
45 The board of selectmen shall appoint all members of town committees, boards and commissions,
46 except for those positions that are elected or another method of appointment is provided for in
47 the town by-laws or by federal or state law or regulation.

48 (f) The board of selectmen shall have oversight of the boards, committees, positions and
49 commissions appointed by the board of selectmen and the general powers provided in section
50 23B of chapter 41 of the General Laws.

51 (g) The board of selectmen shall be the licensing authority for the town, make necessary
52 rules and regulations regarding the issuance of licenses, attach conditions and restrictions to
53 licenses as it deems to be in the public interest, enforce the laws and regulations relating to such
54 licenses and manage all other non-personnel matters as provided by the town by-laws or as
55 provided in the General Laws.

56 (h) The board of selectmen shall be responsible for and shall approve the form and
57 content of all town meeting warrants before such warrants are submitted to the town meeting for
58 deliberation.

59 (i) The board of selectmen shall be responsible for establishing and maintaining a written
60 process for the preparation of the budget in the town. The board of selectmen shall annually issue
61 not less than 1 written budget message, including fiscal guidelines and the timeline of budget
62 makers, at the beginning of each budget cycle or at a time established by the town by-laws.

63 (j) The board of selectmen shall review the annual proposed budget prepared by the town
64 manager and make changes as the board of selectmen deems advisable. The town manager shall
65 present the budget which incorporates the changes of the board of selectmen to the finance
66 committee and the town meeting.

67 SECTION 5. (a) The board of selectmen of the town of West Newbury shall create a
68 search committee composed of West Newbury residents to assist in the selection of candidates
69 for the position of town manager. The candidates shall have a demonstrated ability with
70 administrative experience in public management or business administration and who are
71 qualified by reason of education and experience for the position of town manager. The search
72 committee shall recommend to the board of selectmen not less than 3 qualified candidates. After

73 receiving the recommendations of the search committee, the board of selectmen shall appoint a
74 town manager from the recommended candidates; provided, however, that the board of
75 selectmen shall not be required to appoint any of the recommended candidates and may request
76 that the search committee continue the screening process or the board of selectmen may appoint
77 a new search committee to continue or restart the search.

78 (b) A member or former member of the board of selectmen shall not be eligible to be
79 appointed to the position of town manager within 15 months of serving on the board of
80 selectmen.

81 (c) The board of selectmen may enter into a formal written contract with the town
82 manager and may set contract terms that shall have precedence over any personnel by-laws.

83 (d) The town manager may be appointed for successive terms of office. A term of office
84 shall not be more than 3 years. The board of selectmen shall not be obligated to renew an expired
85 contract. The town manager shall be sworn to the faithful and impartial performance of the duties
86 of the office the town manager by the town clerk or a notary public before taking office.

87 (e) The town manager shall execute a bond in favor of the town for the faithful
88 performance of the town manager's duties in such sums and with such sureties as may be fixed
89 and approved by the board of selectmen. The cost for such bond shall be borne by the town.

90 (f) The board of selectmen shall set the compensation for the town manager, not to
91 exceed an amount appropriated by the town meeting.

92 SECTION 6. (a) The board of selectmen of the town of West Newbury may remove the
93 town manager by a majority vote with the full board present. Not less than 30 days before that

94 removal is effective, the board of selectmen shall file a preliminary resolution in writing with the
95 town clerk setting forth the reason, if any, for the removal and shall cause a copy of the
96 preliminary resolution to be delivered to the town manager by hand delivery or by certified mail
97 to the address listed for the town manager in the payroll records of the town of West Newbury.

98 (b) The town manager may reply in writing to the preliminary resolution and may request
99 a public hearing; provided, however, that the town manager shall cause a copy of such request to
100 be delivered to the town clerk not later than 10 days after the town manager's receipt of the
101 preliminary resolution. If the town manager requests a public hearing, the board of selectmen
102 shall hold a public hearing not less than 10 days nor more than 20 days after the filing of such
103 request.

104 (c) Following the public hearing or, if there is no public hearing, at the expiration of 30
105 days from the date of delivery of the preliminary resolution to the town manager, the board of
106 selectmen may adopt a final resolution of removal.

107 (d) As part of the preliminary resolution, the board of selectmen may suspend the town
108 manager from duty.

109 (e) Nothing in this section shall limit the authority of the board of selectmen to suspend
110 or remove the town manager as provided by the General Laws.

111 (f) Any suspension of the town manager may be with or without pay.

112 SECTION 7. (a) During a temporary absence of not more than 30 days, the town
113 manager of the town of West Newbury shall designate a temporary town administrator to
114 perform the duties of the office by filing a letter with the town clerk and the board of selectmen.

115 Such delegation shall be limited to those duties of the office not allowing for delay during the
116 town manager's absence.

117 (b) The board of selectmen reserves the right to select a different temporary town
118 administrator, in place of the town manager's designee or in the case of the failure of the town
119 manager to select a temporary town administrator, to perform the functions of the town manager
120 during the absence of the town manager. Such a delegation shall be limited to those duties of the
121 office not allowing for delay during the town manager's absence.

122 (c) During an extended absence of the town manager for more than 30 days due to
123 disability, illness or other circumstance, the board of selectmen shall appoint an acting town
124 manager for the duration of the extended absence. Such designation will cease upon the return of
125 the town manager.

126 (d) If the individual serving as acting town manager is a town officer or employee, the
127 individual shall return to the position held before being appointed the acting town manager.

128 (e) A member of the board of selectmen shall not serve as acting town manager.

129 (f) If the board of selectmen determines that the town manager is unable to resume the
130 duties of the office for any reason including, but not limited to, resignation, termination or
131 illness, the office of the town manager shall be filled as soon as practicable by the board of
132 selectmen; provided, however, that the board of selectmen may appoint an acting town manager
133 to serve until a new town manager is appointed.

134 (g) The board of selectmen shall determine the powers and responsibilities of the
135 temporary town administrator or the acting town manager.

136 SECTION 8. (a) The town manager of the town of West Newbury shall be the chief
137 operating and administrative officer of the town and shall be responsible to the board of
138 selectmen for the effective management of all town affairs placed in the town manager's charge
139 by this act, by the board of selectmen, by town by-laws or by vote of the town meeting and for
140 the implementation of town policies placed in the town manager's charge by the board of
141 selectmen.

142 (b) The town manager shall supervise all town departments and direct the day-to-day
143 affairs of the town.

144 (c) The town manager shall be responsible for seeing that the budget is administered as
145 adopted by town meeting and in accordance with the General Laws, this act and the town by-
146 laws.

147 (d) The town manager shall advise the board of selectmen on all matters requiring action
148 by the board of selectmen or the town.

149 (e) The town manager shall oversee the town's personnel system and staff in accordance
150 with town by-laws and shall oversee personnel evaluation policies and practices, employee
151 benefit programs, enforcement of labor contracts, labor relations, collective bargaining, state and
152 federal equal opportunities law compliance in the town and such other human resource
153 obligations as designated by the board of selectmen.

154 (f) The town manager shall attend all meetings of the board of selectmen, except when
155 excused, and all annual and special town meetings.

156 (g) The town manager shall have access to all information necessary for the proper
157 performance of the duties of town manager in accordance with the town by-laws, except for
158 attorney-client privileged information that is provided to or by the board of selectmen, unless the
159 board of selectmen specifically authorizes such access.

160 (h) The town manager shall keep the board of selectmen fully informed regarding all
161 departmental operations, fiscal affairs, general problems and administrative actions and shall
162 submit periodic reports to the board of selectmen.

163 (i) The town manager shall coordinate the activities among boards, commissions and
164 committees concerned with current development and the long-range municipal planning.

165 (j) The town manager shall develop, keep and annually update a full and complete
166 inventory of all property of the town, both real and personal. The town manager shall have
167 jurisdiction over the rental of all town facilities and real property. The use of town property shall
168 not conflict with policies, rental fees and other practices established by the board of selectmen.

169 (k) With the approval of the board of selectmen, the town manager shall prosecute,
170 defend or compromise all litigation matters to which the town is a party.

171 (l) The town manager shall devote full working time to the duties of the office and shall
172 not engage in any business activity during the term of office, except with the written consent of
173 the board of selectmen.

174 (m) The town manager shall keep full and complete records of the town manager's office
175 and shall annually submit to the board of selectmen, unless requested to do so more frequently, a
176 full written report of the operations of the town manager's office.

177 SECTION 9. (a) The town manager of the town of West Newbury shall be the chief
178 financial officer of the town.

179 (b) The town manager may approve any warrants for payment of town funds prepared by
180 the town accountant; provided, however, that the approval of any such warrant by the town
181 manager shall be in compliance with the policies for payment as promulgated by the board of
182 selectmen and such warrant shall be sufficient to authorize payment by the treasurer. If there is a
183 vacancy of the town manager, in the town manager's absence or at any other time, the board of
184 selectmen or a designee of 1 of the members of the board of selectmen may approve such
185 warrants.

186 (c) The town manager shall annually prepare and propose a budget to be included in the
187 annual town meeting warrant. The proposed budget shall be prepared in accordance with the
188 most current budget process established by the board of selectmen. The proposed budget shall
189 detail all estimated revenue from all sources and all proposed expenditures.

190 (d) The town manager shall annually submit a town departmental and organizational
191 structure and that town departmental and organization structure shall be subject to the approval
192 of the board of selectmen. The town manager shall recommend the salaries and pay rates for
193 town employees, except for those employees covered by a collective bargaining agreement;
194 provided, however, that the salaries and pay rates recommended by the town manager shall be
195 subject to modification and approval by the board of selectmen.

196 (e) The town manager shall be responsible for filing grant applications and for informing
197 the board of selectmen of the status of such applications.

198 (f) The town manager shall notify and inform the board of selectmen of any matter
199 impacting the expenditures or revenues of the town.

200 SECTION 10. (a) The town manager of the town of West Newbury shall appoint and
201 may remove all department heads as the term may be defined in the town departmental and
202 organizational structure and any other employees for which a method of selection is not provided
203 in this act or by law.

204 (b) Appointments or removals made by the town manager pursuant to subsection (a) shall
205 be effective 15 calendar days from the date of the filing of a written notice of the appointment or
206 removal with the board of selectmen, unless the board of selectmen vote to reject such
207 appointment or removal. The board of selectmen may waive the 15-day period and allow the
208 action of the town manager to take immediate effect.

209 SECTION 11. (a) The town manager of the town of West Newbury or a negotiating
210 committee authorized by the board of selectmen shall negotiate collective bargaining contracts
211 on behalf of the board of selectmen; provided, however, that such contracts shall be subject to
212 the approval, ratification and execution by the board of selectmen.

213 (b) The board of selectmen may authorize the use of additional counsel or persons to
214 assist the town manager or the negotiating committee in the negotiations for any collective
215 bargaining contract.

216 SECTION 12. This act shall take effect upon its passage.