

SENATE No. 2682

Senate, December 17, 2018 – Text of the Senate amendment (Senator Rush) to the House Bill amending the charter of the town of Needham (House, No. 4948).

The Commonwealth of Massachusetts

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

1 SECTION 1. Chapter 403 of the acts of 1971 is hereby amended by striking out parts 1
2 to 6, inclusive, as most recently amended by section 1 of chapter 114 of the acts of 2015, and
3 inserting in place thereof the following 6 parts:-

4 PART 1.

5 INCORPORATION, SHORT TITLE, DEFINITIONS

6 Section 1. Incorporation Continued. All the inhabitants dwelling within the territorial
7 limits of the town of Needham, as presently and hereafter constituted, shall continue to be a body
8 politic and corporate known as the town of Needham which shall be a political subdivision of the
9 commonwealth and, as such, shall have perpetual succession and shall hold and exercise all
10 powers and privileges heretofore exercised by the town and any additional powers and privileges
11 herein conferred and all powers and privileges conferred upon towns under the constitution and
12 laws of the commonwealth.

13 Section 2. Short Title. This act shall be known and may be cited as the Needham special
14 home rule charter.

Section 3. Definitions. As used in this act, the following words and phrases shall have the following meanings unless the context or the constitution of the commonwealth clearly requires otherwise.

"Charter", this act and any amendments to this act adopted pursuant to chapter 43B of the General Laws.

"Civil defense laws", all General Laws, temporary laws and the provisions of this charter relative to: (i) the defense of the commonwealth in anticipation of, during and following enemy attack; (ii) the suppression of domestic disorders; (iii) the protection of order, life and property during and immediately following natural or man made disasters of great magnitude; and (iv) the continuity of government in the commonwealth and in the town during and immediately following any such attack, disorder or disaster.

"Town meeting", a regular or special meeting of the elected representative town meeting members; provided., however, that "town meeting" shall not include a meeting of the registered voters of the town unless the context clearly requires otherwise.

"Vote of the town", a town by law or a vote adopted by the town meeting including, where appropriate to the context, the results of a referendum.

PART 2.

REPRESENTATIVE TOWN MEETING

Section 4. Representative Town Meeting Continued. There shall continue to be in the town the form of representative town government by limited town meetings as set forth herein.

Section 5. Establishment of Town Meeting Precincts. The division of the town into 10 voting precincts shall continue until re-divided pursuant to this section. The select board, in exercising its authority to divide the territory of the town into voting precincts, shall make such division as will provide not more than 10 precincts, each of which shall contain approximately the same number of inhabitants.

The precincts shall be established so as to consist of compact and contiguous territory and bounded, so far as possible, by the center line of known streets and ways or by other well defined limits. Their boundaries shall be reviewed and, if need be, revised by the select board based on the most recent federal census in the second January following the taking of the census, conformable to the requirements of sections 1 to 10, inclusive, of chapter 54 of the General Laws. In any year when so directed by a vote of a town meeting, the boundaries shall be reviewed and, if necessary, revised by the select board in conformity to said sections 1 to 10, inclusive, of said chapter 54.

Not later than 20 days after the establishment or revision of the precincts, but not later than January 31 of that year, the select board shall file a report of their doings with the town clerk, the registrars of voters and the assessors with maps or descriptions of the precincts and the names and residences of the registered voters therein. The select board shall also cause to be posted at the town hall such maps or descriptions of the precincts as established or revised from time to time, with the names and residences of the registered voters therein. They shall also cause to be posted in at least 1 public place in each precinct a map or description of that precinct, with the names and residences of the registered voters therein

56 The division of the town into precincts and any revision of such precincts shall take effect
57 on the date that the select board files the report thereof with the town clerk. Whenever the
58 precincts are established or revised, the town clerk shall forthwith give written notice thereof to
59 the state secretary, stating the number and designation of the precincts.

60 Meetings of the registered voters of the several precincts for elections, for primaries and
61 for voting upon any question to be submitted to all of the registered voters of the town shall be
62 held on the same day and at the same hour and at such places within the town as the select board
63 shall direct in the warrant for such meeting.

64 Section 6. Representative Town Meeting Membership. Other than the officers
65 designated in section 7 as town meeting members at large, the representative town meeting
66 membership in each precinct shall consist of the largest number divisible by 3 which will admit
67 of a representation thereof in the approximate proportion which the number of inhabitants therein
68 bears to the total number of inhabitants in the town and which will cause the total elected
69 membership to be as nearly but not more than 240 as may be.

70 In any year in which a revision of the precincts in the town may not be done because of
71 the restrictions imposed by chapter 54 of the General Laws, the select board may reapportion the
72 seats of the town meeting members elected from precincts in proportion to the number of
73 inhabitants residing therein in order to reflect significant population changes as estimated by the
74 town clerk using the annual street listings and the annual school census.

75 The registered voters in each precinct shall elect by ballot the number of registered voters
76 in the precinct, other than the officers designated in section 7 as town meeting members at large,
77 as provided for in the first paragraph to be town meeting members.

78 The incumbent town meeting members serving at the time this charter takes effect shall
79 continue to serve the balance of the terms for which they were elected. Their successors shall be
80 elected in the same manner for 3-year terms as may be necessary to provide for each precinct the
81 total number to which it is then entitled. Upon the redivision of the town into a greater or lesser
82 number of precincts in accordance with the procedures set forth in this charter and in the General
83 Laws, the terms of all incumbent town meeting members shall terminate upon the election and
84 qualification of their successors as provided in the following paragraph.

85 After any redivision of the town into precincts as provided in this charter, the registered
86 voters in each precinct shall elect by ballot the number of registered voters in the precinct, other
87 than the officers designated in section 7 as town meeting members at large, as provided for in the
88 first paragraph to be town meeting members pursuant to the following paragraph.

89 The first third in order of votes received of members so elected shall serve 3 years, the
90 second third in such order shall serve 2 years and the remaining third in such order shall serve 1
91 year, beginning on the day of such election. In case of a tie vote affecting the division into
92 thirds, the members elected from the precinct shall determine the same by ballot. Thereafter,
93 except as otherwise provided herein, at each annual town election, the registered voters of each
94 precinct shall, in like manner, elect as town meeting members for terms of 3 years such number
95 of elected town meeting members as are necessary to provide for such precinct the total number
96 of elected town meeting members to which it is then entitled and the registered voters shall at
97 such election fill any vacancies then existing in the number of town meeting members in such
98 precinct and such persons elected shall serve for the remainder of the unexpired terms for which
99 they were elected. The terms of office of all elected town meeting members from each precinct
100 shall cease upon the election of their successors as herein provided. Town meeting members as

such shall receive no compensation. After each election of town meeting members, the town clerk shall forthwith notify each member by mail of their election.

Section 7. Town Meeting Members at Large. Any representative town meeting held under this charter, except as otherwise provided herein, shall be limited to the voters elected pursuant to section 6, together with the following elected officers designated as town meeting members at large, each of whom shall have the right to vote in the town meeting: (a) any resident member of the general court from the town whose state legislative district is wholly within the town; (b) the moderator; (c) the town clerk; (d) the members of the select board; (e) the chairperson of each other elected board of the town, except the housing authority and the commissioners of trust funds.

If a voter elected to be a town meeting member under section 6 shall be elected to become 1 of the officers designated as a town meeting member at large in clauses (a) to (d), inclusive, of the first paragraph, such person shall, upon such election, cease to be a town meeting member elected under said section 6 and the resulting vacancy in the representation of that member's precinct shall be filled as provided in section 9. A voter may serve at the same time as a town meeting member upon election as such under said section 6 and as an officer designated as a town meeting member at large under clause (e) of said first paragraph and such voter may vote in proceedings of the town meeting as a single member and shall not vote a second time by reason of such dual tenure of offices. The designation as a town meeting member at large under said clause (e) of said first paragraph shall apply to the chair of the elected board as of the tenth day following the annual town election.

Section 8. Nomination of Candidates for Town Meeting Members. Nomination of candidates for town meeting members to be elected under this charter shall be made by nomination papers, which shall bear no political designation, but to the name of an incumbent candidate elected by the people, the words "Candidate for Re-election" may be added. Nomination papers shall be signed by not less than 10 voters of the precinct in which the candidate resides and shall be filed with the town clerk not later than the date fixed by law as the last day for filing nomination papers by candidates for town office; provided, however, that any town meeting member may become a candidate for reelection by giving written notice thereof to the town clerk not later than the last date fixed by law for the giving of such notice. No nomination papers shall be valid in respect to any candidate whose written acceptance is not thereon or attached thereto when filed.

Section 9. Resignations and Vacancies in Elected Town Meeting Membership. A town meeting member may resign by filing a written resignation with the town clerk and such resignation shall take effect on the date of such filing. A town meeting member who removes from the town shall cease to be a town meeting member and an elected town meeting member who removes from 1 precinct to another or becomes removed due to a revision of precincts shall not retain membership after the next annual election as an elected member from the precinct from which he is removed.

If a vacancy occurs in the full number of town meeting members from any precinct, whether arising from a failure of the registered voters thereof to elect or from any other cause, the town clerk shall immediately select the person who received the next highest number of votes for the office of town meeting member in the preceding election in that precinct and shall notify such person of such person's appointment as a town meeting member. If that candidate does not

145 accept such appointment, the town clerk shall select the person who received the next highest
146 number of votes for the office of town meeting member in the preceding election in that precinct.
147 If that candidate does not accept such appointment, the town clerk shall call together the town
148 meeting members of the precinct wherein the vacancy occurred and they shall by majority vote
149 of those present, elect any registered voter of that precinct to fill the vacancy. The town clerk
150 shall count the ballots, make a certificate of the election and notify the person so chosen and,
151 upon receipt by the town clerk of a written acceptance by the person so elected, the person shall
152 be deemed elected and qualified as a town meeting member, subject to the right of all town
153 meeting members to judge the election and qualification of its members, as provided in section
154 10.

155 A town meeting member appointed or elected to fill a vacancy pursuant to this section
156 shall serve only until the next annual town election.

157 A tie vote between 2 or more persons for the last place to be filled by elected candidates
158 or between 2 or more persons with the highest number of votes as defeated candidates or
159 between 2 or more persons with the second highest number of votes as defeated candidates shall
160 be resolved by a majority vote of the town meeting members from that precinct attending a
161 meeting called by the town clerk for that purpose. Upon resolution of a tie vote by the town
162 meeting members, any person not so chosen for the last place to be filled by elected candidates
163 shall be deemed to be the person or receiving the highest number of votes as defeated candidates
164 and any person so tied at the election with the highest number of votes as defeated candidates
165 who are not so chosen by the town meeting members of the precinct shall be deemed to be the
166 person or person receiving the second highest vote as defeated candidates.

Section 10. Town Meeting to be Judge of Own Members. The representative town meeting shall be the judge of the election and qualifications of its elected members.

Section 11. Time, Notice, Conduct and Adjournment of Town Meeting. The annual town meeting for the election of town officers and such other matters as may be voted on the official ballot and the annual town meeting for the transaction of business by the representative town meeting shall be held in February, March, April or May of each year as shall be determined by vote of the town.

The town clerk shall notify town meeting members of the time and place at which representative town meetings shall be held and such notices shall be sent by mail at least 7 days before the meeting.

A majority of the town meeting members shall constitute a quorum for the transaction of business but a lesser number may organize temporarily and may adjourn from time to time. Notice of each adjourned representative town meeting shall be posted by the town clerk in at least 5 public places in the town and the town clerk shall also notify the members by mail of the adjournment at least 24 hours, if the period of adjournment shall permit, before the time of the adjourned representative town meeting. A notice shall state briefly the business to be acted upon at the town meeting and shall include notice of any proposed reconsideration. All town meetings shall be open to the public and the press and, subject to such conditions as may be determined from time to time by the representative town meeting, a voter of the town who is not a town meeting member may speak at any representative town meeting but shall not vote.

Section 12. Warrant Articles and Voting Thereon by Town Meeting. The articles in the warrant for every town meeting that relate to the election of the moderator, town offices, town

meeting members, to referenda and to all other matters to be acted upon and determined by ballot shall be acted upon and determined by the registered voters of the town in their respective precincts.

All other articles in the warrant for a town meeting shall be acted upon and determined exclusively by town meeting members at a meeting to be held at such time and place as shall be set forth by the select board in the warrant for the meeting, subject to the referendum procedure provided for in section 13.

Section 12A. Right of Initiative; Initiative Procedures. Registered voters of the town may, by initiative petition prepared and filed in accordance with this section, propose to an annual town meeting the passage of a measure. If the measure fails to pass at the annual town meeting, the registered voters may cause the measure to be submitted to the voters of the town for their approval or disapproval as hereinafter provided; provided, however, that no measure shall be proposed by initiative petition which: (i) makes a specific appropriation of money from the treasury of the town other than an appropriation to pay for the costs of a study or to pay for a capital acquisition or improvement; (ii) amends the zoning map or zoning by laws of the town; or (iii) proposes the submission to the voters of the town of an amendment to the charter.

An initiative petition shall set forth the full text of the measure proposed by the petitioners and shall first be signed by not less than 100 and not more than 250 registered voters of the town, each of whom shall sign their name and record their address on the petition as such person's name and address appear on the list of registered voters. The initiative petition shall be submitted to the town counsel not later than the fifteenth day of January prior to the annual town meeting into which that petition is to be introduced. If the town counsel shall certify that the

measure proposed by the initiative petition does not conflict with the constitution or the laws of the commonwealth and that it includes only subjects not excluded from the initiative by this section, the initiative petition shall then be filed by the town counsel with the select board and the select board shall cause the proposed measure to be included in the warrant for the annual town meeting as an initiative article and shall be so designated; provided, however, that if the town counsel fails within 10 days following receipt of an initiative petition, to notify the select board in writing of the counsel's reasons for not certifying the petition, the petition shall be deemed to have been certified by the town counsel and, upon the request of any registered voter who had previously signed that petition, the select board shall cause the proposed measure to be included in the warrant as an initiative article and shall be so designated.

If an initiative article is included in the warrant for an annual town meeting, the moderator shall give to any registered voter of the town who signed the initiative petition the privilege of making the first substantive motion under the initiative article, which shall be in the words of the proposal in the article. The moderator shall allow opportunity for debate on the initiative article and on motions thereunder and shall not accept a motion to put the previous questions as to the first substantive motion or as to any motion in substitution therefor until the petitioners and their opponents have been afforded a reasonable time within which to present their arguments without repetition. The town meeting shall act on the first substantive motion in the form in which it was presented and, if such motion is not passed, the town meeting may take such other action under the initiative article which is within the scope thereof, including the adoption of any alternative measure. Action under an initiative article shall be taken by a majority vote, by a 2/3 vote or by such other vote as may be required by the nature of the action under any applicable state law.

234 If the annual town meeting shall dissolve without having adopted, enacted or voted on
235 passage of the first substantive motion presented as aforesaid under an initiative article but at
236 least 1/4 of the total number of town meeting members voting upon the first substantive motion
237 have voted in the affirmative, the original petitioners of the initiative article may complete their
238 petition by filing with the select board an additional number of signatures of registered voters of
239 the town which, when combined with the signatures of the original petitioners, shall equal in
240 number not less than 15 per cent of the total number of persons registered to vote in the town.
241 Each additional signatory voter shall sign the voter's name, and set forth the voter's address on
242 the petition as it appears on the list of registered voters and all additional signatures shall be
243 gathered not earlier than the day following the day on which the aforesaid town meeting
244 dissolved and shall be filed with the select board as set forth above not later than 20 days, not
245 including Sundays and legal holidays, following the dissolution.

246 If the annual town meeting has adopted, enacted or voted passage of any motion as an
247 alternative to or a substitute for the first substantive motion, the original petitioners of the
248 initiative article may in like manner complete their initiative petition by filing with the select
249 board an additional number of signatures as provided in the preceding paragraph.

250 Within 10 days after the filing of the completed initiative petition, the select board shall
251 issue a call for a special meeting of the voters. The meeting shall be held within 14 days after
252 the call was issued to present to the voters at large the measure proposed in the petition that was
253 acted upon unfavorably by the town meeting and any alternative measures that may have been
254 adopted by the town meeting; provided, however, that the 14-day period shall not include
255 Sundays or legal holidays or any day between the first Wednesday in July and the first
256 Wednesday in September immediately following as no such special meeting shall be held

between the first Wednesday in July and the first Wednesday in September. Both of the measures shall appear on the ballot to be voted upon by the voters at large and shall be stated in the same language and form used in the motions acted upon by the town meeting as appearing in the records of the town meeting. The checklist shall be used in the same manner as it is used in the election of town officers.

If a majority of the registered voters of the town voting thereon and at least 20 per cent of all the registered voters, shall vote in the affirmative on either the first substantive motion or upon the alternative motion, the measure voted upon in the affirmative by the number of voters thus required and the measure receiving the largest number of votes if conflicting measures are approved shall take effect immediately or at such later time as may be specified in the measure or, if it be a by law subject to the approval of the attorney general, it shall take effect subject to section 32 of chapter 40 of the General Laws; provided, however, that any measure which, for passage, requires a 2/3 affirmative vote of the town meeting members voting thereon in a town meeting shall, if proposed by an initiative petition or if it is an alternate measure adopted by the town meeting, shall require the affirmative vote of 2/3 of the registered voters voting thereon at a special meeting called by the select board under this section. Any measure proposed by initiative petition or adopted by the town meeting, and approved by the registered voters of the town under this section shall thereafter be subject to amendment, revision or repeal by the town meeting, subject to the right of referendum by petition as provided in section 13.

Nothing in this section shall invalidate or limit the right of 10 or more registered voters to have an article inserted in the annual town meeting warrant at their written request or the right of 100 registered voters or 10 per cent of the total number of registered voters of the town, whichever is lesser, to have an article inserted in a special town meeting warrant at their written

request or the right of 200 registered voters or 20 per cent of the total number of registered voters of the town, whichever is lesser, to request in writing the calling of a special town meeting as provided for in section 10 of chapter 39 of the General Laws.

Section 13. Referenda on Representative Town Meeting Action. No final vote of a town meeting passing a measure under any article in the warrant, except a vote to adjourn or dissolve or a vote appropriating money for the payment of notes or bonds of the town and interest thereon becoming due within the current fiscal year or a vote for the temporary borrowing of money in anticipation of revenue or a vote declared by preamble by a 2/3 vote of the town meeting members present and voting thereon to be an emergency measure necessary for the immediate preservation of the peace, health, safety, or convenience of the town shall be operative until after the expiration of 20 days, not including Sundays and legal holidays, from the dissolution of the town meeting.

If within that 20-day period a referendum petition, signed by not less than 15 per cent of the registered voters of the town and containing their names and addresses as the same appear on the list of registered voters, is filed with the select board requesting that the measure passed by any such vote which has not become operative as aforesaid be submitted to the voters of the town at large, then the operation of such vote shall be further suspended pending its determination as hereinafter provided and the select board, within 10 days after the filing of the referendum petition, shall call a special meeting which shall be held within 14 days after issuing the call to present to the voters at large the measure so involved; provided, however, that the 14-day period shall not include Sundays and legal holidays or any day between the first Wednesday in July and the first Wednesday in September immediately following as no such special meetings shall be held between the first Wednesday in July and the first Wednesday in September.

303 All votes on any measure so submitted shall be taken by ballot and the measure so
304 submitted shall be stated upon the ballot in the same language and form as the motion was
305 adopted by the town meeting, as appearing in the records of the town meeting. The checklist
306 shall be used in the same manner as in the election of town officers. If a majority of the
307 registered voters of the town voting thereon and at least 20 per cent of all the registered voters
308 shall vote in the negative, the action of the town meeting in passing the measure that was the
309 subject of the referendum petition shall be null and void, otherwise it shall take effect
310 immediately upon the declaration by the select board of the vote upon the referendum or at such
311 later date as may be specified by the vote of the town meeting.

312 If a referendum petition is not filed within the 20-day period, the vote of the town
313 meeting passing the measure shall become effective on the expiration of that period or at such
314 later date as may be specified in the vote passing the measure.

315 Section 14. Powers of Town and Town Meeting. The town shall continue to have the
316 capacity to act through and be bound by its town meeting members who shall, when convened
317 from time to time as provided by law, constitute a representative town meeting and the
318 representative town meeting shall exercise exclusively, in conformance with this charter, all
319 powers vested in the municipal corporation. Actions in conformance with laws that are now or
320 hereafter applicable to the transaction of town affairs in town meetings shall, when taken by a
321 town meeting in accordance with this charter, have the same force and effect as if such action
322 had been taken in a town meeting open to all the voters of the town as heretofore organized and
323 conducted.

Section 15. Certain Rights of the People not Abridged. Nothing in this charter shall abridge the right of the inhabitants of the town to hold general meetings as that right is secured to them by the constitution of the commonwealth and nothing in this charter shall confer upon any representative town meeting of the town the power finally to commit the town to any measure affecting its municipal existence or changing its government without action taken thereon by the voters of the town at large, using the official ballot and check list therefor.

PART 3.

TOWN OFFICERS

Section 16. Select board. There shall be a select board for the town which shall consist of 5 members elected at each annual town election for 3-year terms. The select board shall continue to have and exercise all the powers and duties vested in select boards or boards of selectmen by the General Laws or by vote of the town, except as otherwise provided herein. For the purposes of this charter and the by-laws of the town, "selectmen" or "board of selectmen" shall mean select board. Members of the select board may be addressed as select board member, board member, selectwoman or selectman.

The select board shall have general authority to execute the civil defense laws within the town and to make any declaration of emergency as required by law.

Section 17. School Committee. There shall continue to be a school committee for the town which shall consist of 3, 5, 6, 7 or 9 members elected at each annual town election for terms of 3 years as the town may vote. The school committee shall have the powers, duties, responsibilities and functions vested in school committees by the General Laws and as delegated to it by the town which are not inconsistent with the General Laws. The school committee shall

346 execute all laws pertaining to educational responsibilities assigned to the town and such further
347 responsibilities as may be delegated to them by vote of the town

348 Section 18. Moderator. A moderator shall be elected by ballot at the annual town
349 election for a term of 3 years and shall serve as moderator of all town meetings, except as
350 otherwise provided by law, and shall serve until a successor is elected and qualified.
351 Nominations for and election of a moderator shall be as in the case of other elective town
352 officers and any vacancy in the office may be filled by the town meeting members at a meeting
353 held for that purpose. If a moderator is absent, a moderator pro tempore may be elected by the
354 town meeting members.

355 Section 19. Other Elected Officers. The town, at its annual town meeting, shall in each
356 year when the term of office of an incumbent expires and except when other provision is made
357 by law, choose by ballot from its registered voters the following town officers for the following
358 terms of office:

359 (i) a town clerk for a term of at least 1 year;

360 (ii) 3 or 5 park and recreation commissioners for 3-year terms as may be established
361 by vote of the town;

362 (iii) at least 1 constable for a 3-year term unless the town, by vote, provides that
363 constables shall be appointed;

364 (iv) 1, 3 or 5 assessors, but as nearly 1/3 of their number shall be elected or appointed
365 annually, each to hold office for 3-years terms as provided by vote of the town;

366 (v) 5 members of the board of health for 3-year terms;

(vi) 5 to 9 planning board members elected pursuant to section 81A of chapter 41 of the General Laws as established by vote of the town;

(vii) 7 trustees of the Needham Public Library, but as nearly one 1/3 of their number shall be elected annually, each to hold office for 3-year terms as provided by vote of the town;

(viii) 4 members of the Needham Housing Authority for 5 year terms;

(ix) 3 or 5 trustees of Memorial Park for 3-year terms as provided by vote of the town; and

(x) any other officers as may be provided for by the General Laws or by vote of the town.

Section 20. Appointed Officials.

(a) The select board shall appoint and may remove a town manager or an acting town manager in accordance with section 20A.

(b) The select board shall appoint a town counsel, members of the board of appeals, election officers, registrars of voters, except the town clerk, members of the historic commission, conservation commission, commission on disabilities and, except as provided in section 19, all other boards, committees and commissions for whom no other method of selection is provided in this charter or by-law.

(c) The town manager shall appoint, subject to the approval of the select board, a chief of the police department, a chief of the fire department, a director of public works, an assistant town manager/director of finance or a person performing such functions regardless of title and an assistant town manager/personnel director or a person performing such functions regardless of

388 title. Appointments made by the town manager shall become effective upon the approval of the
389 select board. If the select board shall fail to act, appointments made by the town manager shall
390 become effective on the fifteenth day following the day on which notice of the proposed
391 appointment was filed with the select board; provided, however, that notice of appointment shall
392 be considered filed with the select board when the notice is filed at an open meeting of the select
393 board.

394 (d) The town manager shall be the appointing authority for the following officials and
395 employees of the town:

396 (i) the town accountant, a town treasurer/tax collector, a planning director, an
397 administrative assessor, an inspector of buildings, a director of public health, a director of
398 veterans' services, a director of park and recreation, a director of youth services, a director of
399 management information systems, an executive director of the council on aging, a library
400 director, a town engineer, a director of municipal building maintenance and a building
401 construction and renovation manager or any persons performing such functions regardless of
402 title; and

403 (ii) all other employees and officials of the town for whom no other method of selection
404 is provided in this charter, except for employees of the school department and the executive
405 secretary of the finance committee; provided, however, that the executive secretary of the
406 finance committee shall be appointed by the finance committee.

407 (e) Any appointment by the town manager in accordance with clause (i) of subsection (d)
408 shall be subject to the approval of the elected or appointed board or committee having
409 jurisdiction over a department, if any. Appointments made by the town manager shall become

effective upon the approval of the board or committee. If a board or committee fails to act, appointments made by the town manager shall become effective on the fifteenth day following the day on which notice of the proposed appointment was filed with the board or committee; provided, however, that notice of appointment shall be considered filed with the board or committee when the notice is filed at an open meeting of the board or committee.

(f) A person appointed by the town manager under subsections (c) and (d) who is not subject to chapter 31 of the General Laws may be removed by the town manager; provided, however, that no removal shall be made of any officer in said subsection (c) without the approval of the select board; and provided further, that no removal shall be made of other employees or officers until the town manager consults with the elected or appointed boards or committees having jurisdiction over that employee's department, if any. Removal of officers pursuant to said subsection (c) shall become effective upon the approval of the select board. If the select board fails to act, removals made by the town manager shall become effective on the fifteenth day following the day on which notice of the proposed removal was filed with the select board; provided, however, that notice of removal shall be considered filed with the select board when the notice is filed at an open meeting of the select board.

Section 20A. Appointment and Removal of Town Manager.

(a) Appointment of Town Manager.

(1) The select board shall appoint a town manager for a term of not more than 3 years. The town manager shall be a professionally qualified person of proven ability who has had substantial involvement with municipal government. The town manager shall be appropriately fitted by education, training and experience to perform the duties of the office; provided,

however, that such experience shall have been full-time, paid experience in a responsible administrative position.

(2) Upon the expiration of the term of the town manager or upon the resignation or removal of the town manager or if a vacancy occurs in the office of town manager, the select board shall appoint an acting manager within 7 days after such expiration, resignation, removal or vacancy to perform the duties of the office and the acting manager shall serve until a successor is appointed and qualified in accordance with paragraph (1).

(3) The town manager shall be appointed without regard to party or political designation. The town manager shall be a citizen of the United States of America. No person holding elective public office in the town, except for town meeting member, shall, within 3 years of holding such elective public office, be eligible for appointment as town manager.

(4) The town manager shall not hold an elective public office during the town manager's tenure and shall not engage in any other business or occupation during such tenure, except for part-time consultative or teaching duties, directly related to the profession of municipal management and with the expressed consent of the select board. The town manager may be appointed for successive terms of office.

(5) Before entering upon the duties of the town manager's office, the town manager shall be sworn, in the presence of a majority of the select board, to the faithful and impartial performance of the town manager's duties by the town clerk or a justice of the peace.

(b) Acting Town Manager. The town manager may designate, subject to the approval of the select board, by means of a letter filed with the town clerk, a suitable person to perform the duties of the office during the town manager's temporary absence or disability. If the town

454 manager fails to make the appointment or if the person so appointed fails to serve, the select
455 board may appoint a suitable person to perform such duties. Upon a vacancy in the office of
456 town manager or upon a suspension of the town manager, the select board shall, within 7 days
457 after such vacancy or suspension, appoint an acting town manager to perform the duties of the
458 office.

459 (c) Removal of the Town Manager. The select board may suspend or remove the town
460 manager by the affirmative vote of a majority of the full membership of the select board.

461 Section 20B. Powers and Duties of the Town Manager. The town manager shall be the
462 chief executive officer of the town. In addition to other powers and duties provided for in this
463 charter, the town manager:

464 (i) shall supervise, either directly or through persons appointed by the town manager in
465 accordance with this charter, all department managers, except the school department managers,
466 and shall be responsible for the efficient administration of all departments, except the school
467 department; provided, however, that the town manager shall not exercise any control over the
468 discretionary power vested by law in any board, committee, commission or officer;

469 (ii) may, consistent with this charter, the General Laws and the town by-laws and with
470 the approval of elected boards having jurisdiction over affected departments, where applicable,
471 and with the approval of the select board after a public hearing held by the select board for such
472 purpose, reorganize, consolidate or abolish departments under the town manager's supervision
473 and establish such new departments as the town manager considers necessary and transfer the
474 duties and powers and, so far as is consistent with the use for which the funds were voted by the
475 town, transfer the appropriation of 1 department to another;

(iii) shall have jurisdiction over the rental and use of all town property, except school property, and shall be responsible for the maintenance and repair of all town buildings, including school buildings and grounds; provided, however, that the town manager shall be responsible for the preparation of plans and the supervision of all work on existing and new buildings, including the planning and work on school buildings, unless otherwise assigned by the town meeting to a permanent building committee; and provided further that any plans for the construction or improvement of school buildings or property shall be subject to the approval of the school committee;

(iv) shall be the purchasing agent for the town and shall award all contracts for all departments and activities of the town, except for the school department;

(v) shall adopt rules and regulations establishing a personnel system, subject to the approval of the select board and with the oversight of the personnel board as provided herein; provided, however, that such personnel system shall make use of modern concepts of personnel management and shall include, but not be limited to: (a) a method of administration; (b) personnel policies indicating the rights, obligations and benefits of employees; (c) a classification plan; (d) a compensation plan; (e) a method of recruiting and selecting employees based on merit principles; (f) a centralized record keeping system; (g) disciplinary and grievance procedures; (h) a professional development and training program; and (i) such other elements as deemed necessary; provided further, that all town agencies and positions shall be subject to the rules and regulations adopted under this clause, excluding employees of the school department and as otherwise provided in chapter 150E of the General Laws; provided further, that personnel policies referenced in clause (b) or changes to such policies shall not be submitted to the select board without the prior review and approval of the personnel board; provided further, that

499 classification or compensation plans referenced in clauses (c) and (d), or changes to such plans,
500 shall not be submitted to the select board for approval until the town manager has submitted the
501 plan or plan revision to the personnel board for review and comment and, if comments were
502 made within 15 days after submission, the town manager has provided written response to any
503 comments made by the personnel board; and provided further, that in all other aspects of the
504 personnel system, the town manager shall confer with the personnel board.

505 (vi) shall fix the compensation of all town employees except, those under the jurisdiction
506 of the school committee, within the limits established by appropriation and subject to chapter
507 150E of the General Laws.

508 (vii) shall negotiate and administer all collective bargaining agreements with employee
509 organizations representing town employees, other than employees of the school department,
510 pertaining to wages and other terms and conditions of employment in accordance with chapter
511 150E of the General Laws; provided, however, that such agreements, other than agreements with
512 employee organizations representing school department employees, shall be subject to the
513 approval of the select board; provided further, that subject to the approval of the select board, the
514 town manager may employ special counsel to assist in the performance of the duties under this
515 clause; and provided further, that the town manager or a designee shall participate in the
516 deliberations of the school committee in collective bargaining with employee organizations
517 representing school department employees as provided in said chapter 150E;

518 (viii) shall keep the records of the office of town manager and shall render, as often as
519 may be required by the select board, a report of all operations during the period reported on;

520 (ix) shall keep the select board advised as to the needs of the town and shall recommend
521 to the select board for adoption measures requiring action by the select board or by the town as
522 considered necessary or expedient by the town manager;

523 (x) shall implement town meeting votes and shall report in writing annually to the town
524 meeting on the status of prior town meeting votes on which implementation has not been
525 completed, except matters related to the schools;

526 (xi) shall administer, either directly or through a person appointed by the town manager
527 in accordance with this charter, all general and special laws applicable to the town, all by-laws
528 and votes of the town and all rules and regulations made by the select board, except matters
529 related to the schools;

530 (xii) shall report to the select board and the finance committee on the financial condition
531 of the town;

532 (xiii) shall have access to all town books and papers for information necessary for the
533 proper performance of the town manager's duties and may, without notice, cause the affairs of
534 any department or activity under the town manager's control, or the conduct of any officer or
535 employee thereof, to be examined;

536 (xiv) shall be accessible and available for consultation to the chairs of town boards,
537 committees and commissions, whether appointed or elected, and shall make accessible and
538 available to them such data and records of the town manager's office as may be requested in
539 connection with their official duties; and

(xv) shall perform such other duties consistent with the town manager's office as may be required by the by-laws, by vote of the town or by vote of the select board.

The town manager shall be the chief fiscal officer of the town. Warrants for the payment of town funds prepared by the town accountant in accordance with section 56 of chapter 41 of the General Laws shall be submitted to the town manager. The approval of the warrant by the town manager or, in the town manager's absence, by the acting town manager shall be sufficient authority to authorize payment by the town treasurer but the select board shall approve all warrants in the event of the absence of the town manager or acting town manager or during a vacancy in the office of town manager.

When a payroll, bill or other claim against the town has been presented to the town manager, the town manager shall, if the matter appears to the town manager to be invalid, excessive in amount or otherwise contrary to the interests of the town, immediately investigate the facts and determine what, if any, payments shall be made. Pending the investigation and determination by the town manager, payment shall be withheld.

Section 20C. Estimate of Capital Expenditures. All boards, departments, committees, commissions and officers of the town shall annually, at the request of the town manager, submit to the town manager in writing a detailed estimate of the capital expenditures, as defined by by-law, required for the efficient and proper conduct of their respective departments and offices for the ensuing fiscal year and the ensuing 4-year period. The town manager, after consultation with the select board, shall submit to the select board in writing a careful, detailed estimate of the recommended capital expenditures for the aforesaid periods, showing specifically the amount necessary to be provided for each office, department and activity and a statement of the amounts

562 required to meet the debt service requirements or other indebtedness of the town. The select
563 board shall transmit a copy of the capital budget to the finance committee along with the select
564 board's recommendations relative thereto. The calendar dates on or before which the capital
565 budget is to be submitted and transmitted shall be specified by by-law.

566 Section 21. Other Boards, Committees and Commissions. The following boards and
567 committee shall continue to perform the duties and responsibilities assigned to them by the
568 General Laws or by vote of the town:

569 (i) a finance committee which shall consist of such number as shall be established by
570 vote of the town;

571 (ii) a personnel board;

572 (iii) commissioners of trust funds; and

573 (iv) such other boards, committees and commissions as provided for by the General
574 Laws or by vote of the town.

575 PART 4.

576 PUBLIC WORKS

577 Section 22. Select board to be Board of Public Works. The select board shall continue to
578 be and shall exercise the functions of a board of public works and, in that capacity, shall exercise
579 under the designation of select board all of the powers and duties vested by law in the following
580 boards and offices: (i) highway surveyors; (ii) water commissioners; (iii) sewer commissioners;
581 and (iv) tree wardens; provided, however, that such boards and commission shall be abolished on

the effective date of this act. The select board, acting as the board of public works, shall be the lawful successor of the boards and offices abolished by this section.

Section 23. Director of Public Works. The town manager shall appoint a director of public works who shall administer, under the supervision of the town manager, the departments of the town under the control of the select board as they may designate. The director shall be responsible for the efficient administration of all departments within the scope of the director's duties and shall hold office subject to the will of the town manager, consistent with subsection (c) of section 20. The director shall be especially fitted by education, training and experience to perform the duties of the office and shall not be required to be a resident of the town. During the director's tenure, the director shall not hold elective public office or another appointive public office and the director shall not be engaged in any other business or occupation. The director shall, subject to the approval of the town manager, appoint such assistants, agents and employees as the performance of the duties of the departments under the director's supervision may require and may, with like approval, remove any such assistant, agent or employee. The director shall keep records of the doings of the office and shall have charge of and shall preserve, arrange and index so as to be readily accessible to the public all plans, surveys, field notes, records, documents and inventories connected with the engineering operations of the town. The director shall deliver to the town manager, as often as the town manager may require, a report of all operations under the director's control during the period reported upon and shall, annually and at such other times as the town manager may request, make a synopsis of all the reports for publication. The director shall keep the town manager fully advised of the needs of the town within the scope of the director's duties and shall furnish to the town manager a carefully

604 prepared and detailed written estimate of the appropriations required during the ensuing fiscal
605 year for the proper conduct of all departments of the town under the director's supervision.

606 Section 24. Laying Out, and Maintenance of Drains, etc. The town may lay out,
607 construct, maintain and operate a system of main drains and common sewers for all or part of its
608 territory, with such connections and other works as may be required for a system of sewage
609 disposal. For such purpose, the town may construct such sewers or drains over and under land in
610 the town as may be necessary to conduct the sewage to the south metropolitan sewerage system
611 and, for the purpose of providing better surface or other drainage, may make, lay and maintain
612 such drains as it seems best. The town may, within its limits, make and maintain subdrains and,
613 with the approval of the commonwealth's department of public health, discharge the water into
614 any brook, stream or watercourse within the town. The town may make and maintain within its
615 limits in any way where main drains or common sewers are constructed such connecting drains,
616 underdrains and sewers within the limits of such way as may be necessary to connect any estate
617 which abuts upon such way.

618 Section 25. Particular Sewers. The town, through its select board acting as the board of
619 public works, may upon the application of the owner of any estate abutting on any way where a
620 main drain or common sewer is constructed, lay in such sewered way and in the private land of
621 such owner such particular sewer or connecting drain as may be necessary to connect any
622 building on such estate with that main drain or sewer and the town manager may make all
623 necessary contracts in the name and behalf of the town for such purpose. The expenses thereof
624 shall be paid out of any appropriation that may be made by the town therefor.

Section 26. Exercise of Eminent Domain, etc., for Sewer and Drain Purposes. The select board, as the board of public works acting for and on behalf of the town, may take by eminent domain under chapter 79 of the General Laws or acquire by purchase or otherwise any lands, water rights, rights of way or easements, public or private, in the town, necessary for accomplishing any purposes referenced in sections 24 to 31, inclusive, and may construct such main drains and sewers under or over any bridge, railroad, railway, boulevard or other public way or within the location of any railroad and may enter upon and dig up any private land or public way for the purpose of laying such drains and sewers and for maintaining and repairing the same and may do any other thing proper or necessary for the purposes of said sections 24 to 31, inclusive; provided, however, that the select board shall not take in fee any land of a railroad corporation and shall not enter upon or construct any drain or sewer within the location of any railroad corporation except at such time and in such manner as the select board and the corporation may agree or, in case of a failure to agree, as may be approved by the department of public utilities. Any person injured in their property by an action of the select board under this section may recover damages from the town under said chapter 79.

Section 27. Apportionment of Costs of Sewage Disposal. The town shall, by vote of its town meeting, determine what proportion of the cost of any system of sewerage and sewage disposal the town shall pay; provided, however, that it shall pay not less than $\frac{1}{4}$ and not more than $\frac{2}{3}$ of the whole cost. In providing for the payment of the remaining portion of the cost of a system or for the use of a system, the town may avail itself of any of the methods authorized by the General Laws and any General Laws relative to the assessment, apportionment, division, reassessment, abatement and collection of sewer assessments, to liens therefor and to interest thereon shall apply to assessments made hereunder. At the same meeting at which it determines

648 the proportion of the cost to be borne by the town, the town meeting may by vote determine
649 which methods the remaining portion of the cost shall be provided for. The collector of taxes of
650 the town shall certify the payments of such assessments or apportionments thereof to the select
651 board and the select board shall preserve a record thereof.

652 Section 28. Assessment of Sewer Betterment. The cost of constructing each particular
653 sewer or connecting drain described in section 25 shall be assessed by the select board upon the
654 estate benefited thereby. Such assessments shall be made by filing with the collector of taxes of
655 the town a certificate, designating the way and the private land on which the particular sewer or
656 connecting drain has been constructed and by giving the names of any owners of the estate for
657 which such connection has been made and the amount of the assessment to be paid by each such
658 owner. A copy or duplicate of the certificate shall, within 10 days after the filing of the same
659 with the collector of taxes, be recorded in the Norfolk county registry of deeds or, in the case of
660 registered land, in the office of the assistant recorder for the Norfolk county registry of deeds.
661 The collector of taxes shall, upon receipt of such certificate, make a written demand for the
662 payment of such assessment or charge and each owner shall, within 3 months after such demand
663 was served upon the owner or occupant of the estate or sent by mail to the last address of the
664 owner known to the collector of taxes, pay to the collector of taxes the sum so assessed or
665 charged. Except as provided in this paragraph, the provisions of the General Laws relative to the
666 assessment, apportionment, division, reassessment, abatement and collection of sewer
667 assessments, to liens therefor and to interest thereon shall apply to assessments made under this
668 section. In applying such provisions to assessments, the notice referred to in this section shall be
669 deemed to be the demand of the tax collector required thereunder. The lien for any assessment
670 made under this section shall attach upon the recording or filing for registration of the copy of

671 duplicate of the certificate of assessment. In the apportionment of such assessments thereunder,
672 no installment shall be less than \$10.

673 Section 29. Application of Sewer Receipts. The receipts from sewer assessments and
674 from payments made in lieu thereof shall be applied to the payment of charges and expenses
675 incident to the maintenance and operation of the system of sewerage, or to the extension thereof,
676 to the payment of interest upon bonds and notes issued for sewer purposes or to the payment or
677 redemption of such bonds or notes.

678 Section 30. Sewer Contracts. All contracts made for the purposes of sections 24 to 31,
679 inclusive, shall be made in the name of the town and shall be signed by the town manager. No
680 contract shall be made and no obligation shall be incurred hereunder for the purposes of said
681 sections 24 to 31, inclusive, in excess of the amount appropriated by the town therefor.

682 Section 31. Sewer Regulations. The select board, as the board of public works, may
683 prescribe rules and regulations for the connection of estates and building with main drains and
684 sewers and for the inspection of materials, construction, alteration and use of all connections and
685 drains entering into any such main drains and sewers. The select board may prescribe penalties,
686 which shall not exceed \$50, for each violation of any such rule or regulation. The rules and
687 regulations shall be published at least once a week for 3 consecutive weeks in a newspaper
688 published in the town; provided, however, that if there is no such publication, then the rules and
689 regulations shall be published at least once a week for 3 consecutive weeks in a newspaper
690 published in the county of Norfolk. No rules and regulations shall take effect until such
691 publication has been made.

692 PART 5.

PARK, RECREATION AND CONSERVATION

Section 32. Park and Recreation Commission. There shall continue to be a park and recreation commission in the town which shall consist of such number of commissioners, who shall be elected for such terms as authorized by vote of the town pursuant to section 19. The park and recreation commission shall have the powers, duties and functions vested: (i) by the General Laws in boards of park commissioners, playground or recreation commissions and town forest committees; and (ii) in the commission by this charter or by vote of the town. The commission shall continue to have the management and care of the town forest, formerly managed by the special town forest committee.

Section 33. Memorial Park. The land known as the Memorial Park in the town of Needham shall continue to be under the jurisdiction of the Trustees of Memorial Park. The trustees shall continue to: (i) receive, hold and manage, with the approval of the town meeting, any devise, bequest or gift for the establishment or equipment of memorials for properly commemorating the service of members of the armed forces of the commonwealth and the armed forces of the United States; and (ii) maintain and operate, upon such portion of Memorial Park as they determine, an athletic field with suitable equipment and, in their discretion, to regulate its use for athletic games and other entertainment of a public nature, to which an admission fee may be charged upon such terms and conditions as the trustees may impose.

Section 34. Conservation Commission. There shall continue to be in the town a conservation commission of not less than 3 and not more than 7 members as determined by vote of the town. The conservation commission members shall be appointed by the select board for 3-year terms and the terms of office of approximately 1/3 of the members shall expire each year.

715 The commission shall have the powers, duties and functions specified by section 8C of chapter
716 40 of the General Laws and such additional duties as may be assigned to it by vote of the town.

717 The conservation commission may receive gifts of both real and personal property in the
718 name of the town, subject to the approval of the select board. The conservation commission may
719 acquire by gift, purchase, grant, bequest, devise, lease or otherwise the fee in such land or water
720 rights or any lesser interest, development right, easement, covenant or other contractual right,
721 including conveyances on conditions or with limitations or reversions, as may be necessary to
722 acquire, maintain, improve, protect, limit the future use of or otherwise conserve and properly
723 utilize open space and other land and water areas within the town and shall manage and control
724 the same. The conservation commission may adopt rules and regulations governing the use of
725 land and waters under its control and may prescribe fines of not more than \$100 for any violation
726 thereof.

727 PART 6.

728 MUNICIPAL PLANNING

729 Section 35. Planning Board. There shall continue to be in the town a planning board
730 which shall consist of not less than 5 and not more than 9 members who shall be elected or
731 appointed as may be determined by vote of the town. The planning board members shall be
732 elected or appointed for 5-year terms, so arranged such that the term of at least 1 member shall
733 expire each year and their successors shall be elected or appointed in like manner.

734 Section 36. Board of Appeals. There shall continue to be a board of appeals established
735 under section 14 of chapter 40A of the General Laws, which shall be the existing board of
736 appeals under the town building by law and shall perform the duties of the board of appeals

737 under section 81AA of chapter 41 of the General Laws. The board of appeals shall consist of 3
738 members who shall be appointed by the select board for 3 year terms so arranged that the term of
739 1 appointee shall expire each year. The select board shall, in a like manner, appoint 2 associate
740 members.

741 The board of appeals shall have and shall exercise all of the powers and duties of boards
742 of appeal under the zoning enabling act, the subdivision control law and the building by laws and
743 such further powers and duties as may be granted to the board by vote of the town.

744 SECTION 2. At the annual town election to be held in the town of Needham in 2019, 2
745 additional positions on the board of health shall be placed on the ballot. The candidate receiving
746 the most votes shall be elected to the board of health for a 3-year term. The candidate receiving
747 the second most votes shall be elected to the board of health for a 2-year term.

748 SECTION 3. This act shall take effect upon its passage.