SENATE DOCKET, NO. 1540 FILED ON: 1/21/2011

SENATE . . . . . No. 1007

[LOCAL APPROVAL RECEIVED.]

The Commonwealth of Massachusetts

PRESENTED BY:

Stephen M. Brewer

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 passage of the accompanying:

An Act relative to the town charter for the town of Ashburnham.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Stephen M. Brewer	*Worcester, Hampden, Hampshire, Franklin*
Richard Bastien	*2nd Worcester*

SENATE DOCKET, NO. 1540 FILED ON: 1/21/2011

SENATE . . . . . No. 1007

By Mr. Brewer, petition (accompanied by bill, Senate, No. 1007) of Stephen M. Brewer and Richard Bastien for legislation relative to the town charter for the town of Ashburnham [Local Approval Received] [Joint Committee on Municipalities and Regional Government].

The Commonwealth of Massachusetts

An Act relative to the town charter for the town of Ashburnham.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 428 of the Acts of 1985 is hereby replealed.

SECTION 2. The following shall be the charter of the Town of Ashburnham:

Section 1. Upon the effective date of this act, the Town of Ashburnham shall be governed by the provisions of this act. To the extent that the provisions of this act modify or repeal existing general laws and special acts or that body of law which constitutes the town charter under Section 9 of Article LXXXIX of the Amendments to the Constitution of the Commonwealth, this act shall govern.

Section 2. The Board of Selectmen of said Town of Ashburnham shall appoint the Town Accountant, the Historical Commission, the Arts Commission, the Constables, the Water Commissioners, the Housing Authority and all other boards, committees and commissions except those appointed by the Moderator or otherwise appointed in accordance with the provisions of this act. The Moderator shall continue to appoint officials heretofore appointed by the Moderator.

Section 3. The Regional School Committee members shall continue to be elected in conformity with the votes of the Regional School District. All powers, rights and duties, now or hereafter conferred or imposed by law upon the Regional School Committee, shall be exercised and performed by the Regional School Committee. Nothing in this act shall be construed to affect the powers and duties of the Regional School Committee as provided by law.

Section 4. A member of the Board of Selectmen, or of the Regional School Committee or of the Advisory Board shall, during the term for which he was elected or appointed, be ineligible either by election or appointment to hold any other Town office. Any person appointed by the Town Administrator to any Town office under the provisions of this act or of

any general or special law shall be eligible during the term of said office to appointment to any other Town office, except that the Town Accountant shall not be eligible to hold the position of Town Treasurer or the position of Town Collector. The Town Administrator, subject to any applicable provision of the General Laws relating thereto, may assume the duties of any office which he is authorized to fill by appointment.

Section 5. The Selectmen elected as provided herein shall appoint, as soon as practicable, for a definite term to be set by the Selectmen, a Town Administrator who shall be a person especially fitted by education, training and experience to perform the duties of the office. The Town Administrator shall be appointed without regard to his political affiliations or beliefs. He need not be a resident of the Town or of the Commonwealth when appointed, but shall become a resident of the Town during the first year of his appointment unless otherwise provided by the Selectmen. He shall possess a college degree at the bachelor level and shall have had three years of full-time paid experience in a supervisory administrative position. A masters degree may substitute for not more than one year of such paid experience. He shall execute a bond in favor of the Town for the faithful performance of his duties in such sum and with such surety or sureties as may be fixed or approved by the Selectmen, the cost for which shall be paid by the Town. The Selectmen may enter into a formal contract with the Town Administrator and may set a job description for the Town Administrator which shall take precedence over any personnel by-laws.

Section 6. Any vacancy in the office of the Town Administrator shall be filled as soon as possible by the Selectmen. Pending the appointment of a Town Administrator or the filling of any vacancy, the Selectmen shall, within seven days, appoint a suitable person to perform the duties of the office.

Section 7. The Town Administrator may designate, subject to approval by the Board of Selectmen, by letter filed with the Town Clerk, a qualified officer of the Town to perform his duties during his temporary absence or disability. In the event of failure of the Administrator to make such designation, the Selectmen may, by resolution, designate an officer of the Town to perform the duties Section 8. The Board of Selectmen may, by a unanimous vote, remove the Town Administrator. At least thirty days before such proposed removal shall become effective, the Selectmen shall file a preliminary written resolution with the Town Clerk setting forth in detail the specific reasons for the proposed removal, a copy of which resolution shall be delivered to the Town Administrator. The Administrator may, within ten days of service of such resolution, reply in writing to the resolution and may request a public hearing. Service will be deemed to have been accomplished by leaving a copy of such resolution at the Administrator's last known abode. If the Administrator so requests, the Board of Selectmen shall hold a public hearing not earlier than twenty days nor later than thirty days after the filing of such request. After such public hearing, if any, otherwise at the expiration of thirty days following the filing of the preliminary resolution, and after full consideration, the Selectmen by a unanimous vote of the full membership of the Board, may adopt a final resolution of removal. In the preliminary

resolution, the Selectmen may suspend the Administrator from duty, but shall in any case cause to be paid to him forthwith any unpaid balance of his salary during the period of consideration of the preliminary resolution following the filing of the preliminary resolution. Upon the adoption of a final resolution of removal; the Selectmen shall pay the Administrator severance pay in the amount equal to one month's pay for each full year of service to the Town, but in no event more than an amount equal to three months pay.

Section 9. The Town Administrator shall receive such compensation for his services as the Board of Selectmen shall determine but it shall not exceed the amount appropriated therefore by the Town.

Section 10. In addition to specific powers and duties provided in this act, the Town Administrator shall have the general powers and duties enumerated in this section:

a) The Town Administrator shall supervise the heads of all departments and shall supervise and direct the general administration of all commissions, boards and offices except the Board of Selectmen, the Regional School Committee, the Municipal Light Board, the Advisory Board, the Library Trustees and the Moderator. He shall not, however, exercise any control over the discretionary power vested by statute in any such board, committee, commission or office.

b) The Town Administrator, in accordance with the provisions of this act and with the approval of the Board of Selectmen, except as otherwise expressly prohibited by the General Laws, may reorganize, consolidate or abolish departments, commissions, boards or offices under his direction and supervision in whole or in part, may establish such new departments, commissions, boards or offices as he deems necessary and may transfer the powers and duties of one department, commission, board or office to another.

c) The Town Administrator shall approve, upon the recommendation of department heads, the appointment and removal of all officers and employees of the Town, subject to Chapter thirty-one of the General Laws where applicable. Department heads shall select, on merit and fitness alone, all department employees for such recommendation. The Town Administrator shall appoint on merit and fitness alone, and may remove, subject to said Chapter thirty-one where applicable, all officers and employees of the Town who are not otherwise appointed or elected under this act. Town officers and employees not subject to the provision of said Chapter thirty-one shall not be removed by the Town Administrator except on ten days notice in writing, setting forth the cause of such removal.

d) Notwithstanding the provisions of Section one-hundred and eight of Chapter forty-one of the General Laws, but subject to all applicable provisions of Chapter thirty-one of the General Laws, the Town Administrator shall fix the compensation of all town officers and employees subject to appointment by him.

e) The Town Administrator shall attend all regular meetings of the Board of Selectmen except meetings at which his removal is being considered.

f) The Town Administrator shall keep full and complete records of his office, and shall render as often as may be required by the Selectmen, but, in any case, annually, a full report of all operations during the period reported on.

g) The Town Administrator shall keep the Selectmen fully advised as to the needs of the Town and shall recommend to the Selectmen for adoption such measures requiring action by them or by the Town as he may deem necessary or expedient.

h) The Town Administrator shall have jurisdiction over the rental and use of all Town property and shall be responsible for the maintenance and repair of all Town buildings. He shall be responsible for the preparation of plans and the supervision of work on existing buildings or the construction of new buildings.

i) The Town Administrator shall be responsible for the purchase of all supplies and materials and equipment, except books and educational materials for schools and books and other media for libraries, and shall approve the award of all contracts for all departments of the Town. He shall make purchases for departments not under his supervision only upon requisition duly signed by the head of such department.

j) The Town Administrator shall administer either directly or through a person or persons appointed by him in accordance with this act all provisions of general and special laws applicable to said Town, all by-laws and all regulations established by the Selectmen.

k) The Town Administrator shall have authority, with the approval of the Board of Selectmen, to prosecute, defend and compromise all litigation to which the Town is a party, and shall be the executive officer of a public employer in the Town as referred to in Chapter two hundred and fifty-eight of the General Laws pertaining to the processing of claims against the Town.

l) The Town Administrator shall be the Selectmen's agent for collective bargaining and may employ special counsel to assist him in the performance of these duties.

m) The Town Administrator shall secure on or before December first of each year from all offices, boards and committees charged with equipment a list of all such equipment upon forms approved by the Advisory Board. Such lists shall be filed with the Town Accountant who shall transmit them to the clerk of the Advisory Board.

n) The Town Administrator shall attend all Town meetings and shall be permitted to speak when recognized by the Moderator.

o) The Town Administrator shall be responsible for the implementation of Town meeting votes and shall report annually in writing to the Town Meeting on the status of prior Town Meeting votes on which implementation is not complete.

p) The Town Administrator shall be accessible and available for consultation to chairmen of boards, committees and commissions of the Town, whether appointed or elected, and shall make accessible and available to them all such data and records of his office as may be requested in connection with their official duties.

q) The Town Administrator shall perform such other duties, consistent with his office, as may be required of him by the by-laws of the Town or by vote of the Selectmen or Town Meeting.

Section 11. The Town Administrator may without notice cause the affairs of any division or department under his supervision or the job-related conduct of any officer or employee thereof to be examined. The Town Administrator shall have access to all Town books and papers for information necessary for the proper performance of his duties. The Town Administrator shall promptly transmit any findings of wrongdoing to the Board of Selectmen.

Section 12. The Town Administrator shall appoint, with the approval of the Board of Selectmen, the Town Treasurer-Tax Collector, the Assessors, the Commission of Trust Funds, the Industrial Commission, Energy Conservation and Fuel Allocation Board, Council on Aging, Conservation Commission, Board of Registrars, Zoning Board of Appeals, Election Officials, Parks and Recreation Commission, and all other Town officials whose appointment or election is not specifically provided for herein. Unless otherwise specified by statute, all boards, commissions, committees and councils which are appointed by the Town Administrator shall be appointed for a specific term of office, not to exceed five years, but so that at least one term expires each year. The Town Administrator shall appoint, and may remove subject to the approval of the Board of Selectmen and subject to the provisions of Chapter thirty-one of the General Laws where applicable, all department heads, all officers and all subordinates and employees for whom no other method of appointment is provided in this act, except persons serving under other elected agencies and appointments made by representatives of the Commonwealth.

Appointments to permanent positions made by the Town Administrator shall become effective on the fifteenth day following the day notice of appointment is filed with the Board of Selectmen, unless the Board of Selectmen shall, within that period, by a majority vote of the full board, vote to reject any such appointment. Nothing herein shall be construed to conflict with Chapter thirty-one of the General Laws where applicable.

Section 13. The registered voters of the Town of Ashburnham shall, in accordance with any applicable laws, by-laws and votes of the Town, continue to elect the following:

a) Moderator

b) Board of Selectmen

c) Regional School Committee Members

d) Planning Board

e) Board of Health

f) Library Trustees

g) Municipal Light Board

h) Town Clerk

The provisions of this act shall not affect the term of office of any such elected official or elected member of such board, committee or authority. Every other elective office, board, committee or commission of the Town shall be terminated or shall become appointive as provided herein, any other provision of law to the contrary notwithstanding. The term of office of any person elected to any office, board, committee or commission of the Town, existing at the time of such acceptance and terminated hereunder shall continue until the appointment of the Town Administrator, and thereafter the said offices, boards, committees and commissions shall be abolished and all powers, duties and obligations conferred or imposed thereon by law, except as provided by this act, shall be conferred and imposed upon the Town Administrator to the extent hereinafter provided. The term of office of any person elected to any office, board, committee or commission existing as an elected office at the time of the acceptance of this act and having become appointive hereunder, shall continue until the term for which that person was elected shall have expired, and until the appointment and qualification of his successor.

The powers, duties and responsibilities of elected officials shall be as now or hereafter provided by applicable provisions of General Laws, special acts, by-laws and votes of the Town, except as otherwise expressly provided herein.

Notwithstanding the election by the voters of the Town of the officers named in this section, such officer shall be available to the Administrator for consultation, conference and discussion on matters relating to their respective offices. The Town Administrator may require all such officials, except the Selectmen, to prepare reports for the Town Administrator necessary for the efficient administration of any of his fiscal responsibilities.

Section14. At least ninety days prior to the annual town meeting, the Town Administrator shall submit to the Board of Selectmen a careful, detailed estimate in writing of the probable expenditures of the Town government for the ensuing fiscal year, stating the amount required to meet the interest and maturing bonds and notes or other outstanding indebtedness of the Town, and showing specifically the amount necessary to be provided for

each fund and department, together with a statement of the expenditures of the Town for the same purposes in the preceding year and an estimate of the expenditures for the current year. He shall also submit a statement showing all revenues received by the Town in the preceding fiscal year together with an estimate of the receipts of the current year and an estimate of the amount of income from all sources of revenue exclusive of taxes upon property in the ensuing year. He shall report the probable amount required to be levied and raised by taxation to defray all expenses and liabilities of the Town together with an estimate of the tax rate necessary to raise said amount. For the purposes of enabling the Town Administrator to make up the annual estimates of expenditures, all boards, offices, and committees of the Town shall, at least one hundred and twenty days prior to the annual town meeting, furnish all information in their possession and submit to him in writing, a detailed estimate of the appropriations required for the efficient and proper conduct of their respective departments during the next fiscal year.

Section 15. The Board of Selectmen shall consider the tentative budget submitted by the Town Administrator and make such recommendations relative thereto as they deem expedient and proper in the interests of the Town. On or before the seventy-fifth day prior to the annual town meeting, the Board of Selectmen shall transmit a copy of the budget, together with their recommendations relative thereto, to each member of the Financial Advisory Board.

Section 16. The Town Administrator shall be the chief fiscal officer of the Town. Warrants for the payment of Town funds prepared by the Town Accountant in accordance with the provisions of Section fifty-six of Chapter forty-one of the General Laws shall be submitted to the Town Administrator. The approval of any such warrant by the Town Administrator shall be sufficient authority to authorize payment by the Town Treasurer, but the Selectmen shall approve all warrants in the event of a vacancy in the office of the Town Administrator.

Section 17. All laws, by-laws, votes, rules and regulations, whether enacted by authority of the Town or any other authority, which are in force in the Town of Ashburnham on the effective date of this act, or any portion or portions thereof, not inconsistent with the provisions of this act, shall continue in full force and effect until otherwise provided by other laws, by-laws, votes, rules and regulations, respectively. All other laws, by-laws, votes, rules and regulations so far as they refer to the Town of Ashburnham, are hereby suspended but such suspension shall not revive any pre-existing enactment.

Section 18. No contract existing and no action at law or suit in equity, or other proceeding pending on the effective date of this act, or at the time of revocation of such acceptance, shall be affected by such acceptance or revocation, except that upon revocation any contract made by the Town with the Town Administrator then in office shall be terminated immediately upon such vote subject only to termination payment rights under section eight.

Section 19. Any person holding a Town office or employment under the Town shall retain such office or employment and shall continue to perform his duties until provisions shall

have been made in accordance with this act for the performance of said duties by another person or agency. No person who continues in the permanent full-time service or employment of the Town shall forfeit his pay grade or time in service.

Section 20. Approved October 14, 1986.

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