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Charting a Route for Charter Change

Massachusetts citizens should take pride in the fact that the [Constitution of the Commonwealth](#) is the oldest written Constitution in continuous use in the world – a document that predates and provides the basis for our [federal Constitution](#).

What many people in the state may not realize is that there is a good chance that their local government already existed at the time of the drafting of the Massachusetts Constitution in 1780. In fact, 110 of the Commonwealth's current 351 cities and towns – almost a third! – had been granted charters that marked the geographical boundaries of the community and established a rudimentary local government before the Massachusetts Constitution went into effect.

Just as [the boundaries](#) were in many cases quite different, the structure and role of local government have evolved too. When the citizens of a community want to change the charter that serves as the “constitution” of their local government in order to meet evolving responsibilities and demands, they must follow one of the charter change processes spelled out in the Massachusetts Constitution.

Definition of “Charter”

“Charter, when used in connection with the operation of city and town government shall include a written instrument adopted, amended or revised pursuant to the provisions of chapter forty-three B which establishes and defines the structure of city and town government for a particular community and which may create local offices, and distribute powers, duties and responsibilities among local offices and which may establish and define certain procedures to be followed by the city or town government. Special laws enacted by the general court applicable only to one city or town shall be deemed to have the force of a charter and may be amended, repealed and revised in accordance with the provisions of chapter forty-three B unless any such special law contains a specific prohibition against such action.”
[\(MGL, Chapter 4, Section 7\)](#)

The Two Main Charter Change Routes

[The Home Rule Amendment](#) to the state's constitution provides several routes for preparing or revising a charter. The most familiar are:

- Electing a home rule charter commission
- Petitioning the state legislature for special legislation (“the home rule petition”).

While the two routes to charter change lead to the same aim – a new or revised charter – the procedures and timeline are quite different.

Option one is election of a home rule charter commission, which leads to what is often referred to as a “home rule charter.” A commission of nine members may be elected to “frame a charter” or “revise its present charter” for a city or town upon petition of 15 percent of the municipality's voters. Chapter 43B of the Mass General Laws provides a specific framework, timeline, and set of responsibilities for the charter commission to fulfill. The commission has a maximum of 16 months to produce a preliminary report, and a maximum of 18 months to produce a final report. The statute requires that two public hearings be held. Both the preliminary and final reports must be printed and distributed.

Beyond the provisions of Chapter 43B, the commission as an elected local body operates under the provisions of [MGL, Chapter 39, Section 23 \(“the open meeting law”\)\[1\]](#). The charter commission may examine any and all features relating to the municipality's structure and may propose a form of government that they determine will be responsive to the city or town.

About the Home Rule Amendment

The Home Rule Amendment (HRA) provides limited home rule to Massachusetts cities and towns. Simply stated, the limitations encompass those powers that the state has reserved to itself (e.g., conduct of elections, determination of what constitutes a crime), and continues to have the authority to impose uniform state laws applicable to all cities, all towns, or a class thereof. When the *Home Rule Procedures Act* (MGL, c. 43B) was amended in 1984 by the addition of Section 20, a modest amount of flexibility was included to mitigate the “uniform state law” provision of the HRA as follows:

- Most local officers, boards, and commissions may be either elected or appointed. (Mayors, boards of selectmen, legislative bodies, school committees, and the moderator must be elected.)
- Appointments may be made by the official named in the charter

- Terms of office can be determined by the charter, not to exceed five years
- Appointments may be confirmed by the official(s) named in the charter
- Boards can be of any size, with the caveat that they contain an odd number of members
- Powers, duties, and responsibilities of municipal offices and departments may be divided or merged according to procedures provided in the charter

Option two is the “home rule petition” route, which leads to what is often referred to as a “special act charter.” Section 8 of the Home Rule Amendment provides that cities and towns may use a “home rule petition” to achieve change in structure. This “petition” route was the only route available for cities and towns to make structural change prior to passage of the Amendment.

Section 8 does not provide detailed instructions regarding the preparation of a “home rule petition” charter. A mayor or board of selectmen may appoint a study committee, or such committees may be created by a city council or by a vote of a town meeting. Such actions may set a timeline for such committees to report back to the appointing body, but there is no state requirement for a specific timeline. There is also no requirement for printing and distribution of any proposal. There are no public hearing requirements, per se, although some study committees do provide a public forum for discussion of its recommendations, and town meetings or city council meetings where such changes would be considered are public meetings. In recent years, however, some study committees have made use of the city/town website to publicize their recommendations.

After completing its work, the committee submits its recommendations to the local legislative body, which must decide whether to approve a “home rule petition.” In cities, such approval must also have the concurrence of the mayor. If the petition is passed by the legislative body (and receives the mayor’s approval, where necessary), it is then treated as a piece of proposed legislation – i.e., it is filed with the House or Senate clerk, assigned to a legislative committee, passed by the House and Senate, signed by the [Governor](#), and returned to the city or town. In most instances where a significant change is proposed, the legislation will be subject to ratification by the municipality’s voters prior to taking effect.

Periodic Review of the Charter by a Charter Review Committee

Once a community has a charter, there is often a provision for the periodic appointment of a charter review committee. The committee undertakes an examination to determine the charter's ongoing utility and accuracy. Such committees do NOT have the powers, duties, and responsibilities of an elected charter commission. Such committees are formed to review the charter and to make recommendations to its appointing body (e.g., board of selectmen, city council) regarding the need for additions, deletions, clarifications, or other amendments that would improve the charter.

The term for such an advisory committee is usually one year. Recommendations of the committee may take the form of a proposed special act or a proposed charter amendment, but the local legislative body must act upon the recommendations before they take effect. The committee may also find, for example, that the charter’s intent is clear, but related bylaws or ordinances may need clarification. The role of such committees can be important in assuring that the charter is working as intended, but the charter review committee has no assigned role in achieving any change beyond its recommendation to its appointing body.

Recent Charter Reform Activity

Since the adoption of the Home Rule Amendment in 1966, over 180 charter commissions have been elected, and 88 “home rule charters” are now in effect; 68 in towns and 20 in cities. Currently, 63 municipalities; 21 in towns and 42 in cities operate under special act charters and 17 towns have adopted special acts establishing the position of town manager or town administrator only.

Three recent examples of the special act route are the Towns of Randolph and Bridgewater, and the City of Melrose.

Randolph operated with the representative town meeting/board of selectmen/executive secretary government. But in the fall of 2008, representative town meeting approved a “home rule petition” to place two charter proposals before the Town’s voters in the spring of 2009 – a town council/manager charter and a representative town meeting/board of selectmen/town manager charter. The “home rule petition” was enacted by the state legislature as Chapter 2 of the Acts of 2009, and the Town’s voters chose the town council/manager option in the spring of 2009. In the fall of 2009, voters elected the Town’s first council.

Borrowing from the Randolph example, the Town of Bridgewater proceeded via “home rule petition,” proposing that two charters be brought to the town’s voters – a town council/manager charter and an open town meeting/board of selectmen/town manager charter. In the spring of 2010, the Town’s voters chose the town council/manager option, and the town will be electing its first council later this year.

The City of Melrose, operating under a charter enacted in 1899 (and subject to numerous amendments and additions since then) also sought to make changes in 2004. The mayor appointed a citizen government study committee to make recommendations on how the charter needed to be changed. The initial recommendations of this study committee evolved into a complete revision of the City’s original charter. Among the major changes were: adding the mayor to the school committee’s membership, providing a four-year term for the mayor, reducing the size of the school committee, and giving the mayor authority for department organization/reorganization via adoption of an administrative code. The

city's voters approved this special act charter at the 2005 municipal election.

Two examples of communities that have recently elected charter commissions to propose charters are Southbridge and Winthrop.

In 2002, Southbridge's voters elected a home rule charter commission to revise the home rule charter that the town had adopted in 1973. The charter commission worked to clarify and update the 1973 charter, but it also proposed a major change in the composition of the town council. The 13-member council was composed of both district and at-large members; the 2002 charter commission proposed that the council be reduced to 9 members, all elected at large. The Town's voters approved this charter revision.

The Town of Winthrop's voters elected a charter commission in spring of 2003. At that time, the Town operated with a representative town meeting/board of selectmen/executive secretary. The charter commission proposed a council/manager charter that was approved by the voters in the spring of 2005.

Beyond these examples, several municipalities have elected more than one charter commission and adopted successive home rule charters – e.g., Billerica, Hudson, Methuen, Palmer, Provincetown, Seekonk, and Southbridge.

Amesbury and Easthampton adopted representative town meeting/board of selectmen/manager charters via home rule charter adoption in the 1980s and elected subsequent commissions in 1995, resulting in mayor/council charters that were adopted.

The towns of Abington and Plymouth replaced earlier home rule charters with subsequent adoption of special act charters.

Other towns have used subsequent special acts to revise or replace earlier special act charters. For example, Danvers replaced its special act charter adopted in 1949 by use of the special act process, approving a new special charter in 1997; the town of Amherst replaced its 1951 special act providing for a manager and its 1936 special act authorizing representative town meeting with a single comprehensive act defining the Town's governance structure in 2001.

In two instances, Braintree and Randolph, adopted a city form of government (mayor/council and council/manager, respectively) using the special act process.

Pros and Cons of the Two Routes to Reform

In the 44 years since the adoption of the Home Rule Amendment, more communities have preferred electing a home rule charter commission than the "home rule petition" as the route for considering change. While the preference tilts toward home rule charter adoption (88 home rule charters vs. 63 special act charters), the totals for each route demonstrate that communities use and find benefit in both.

The route to charter change is a choice of the city or town. In the case of the election of a charter commission, the Home Rule Amendment provides more specific direction and a timeline, reflecting the premise that the process should be deliberative, provide opportunities for participation and comment by the municipality's voters, and that the final decision be solely a choice of the voters. While the Attorney General reviews the preliminary report to determine its consistency with state law, the intent of the Home Rule Amendment is to assure that local decision-making is the foundation of the charter adoption process.

Many factors may influence the route chosen. A populace and leadership already "on the same page" regarding the change needed in the structure of the government may find the "home rule petition" route more efficient and timely; a city or town seeking to weigh the advantages of several options before determining a particular course may find the more deliberative approach of electing a charter commission to undertake this examination more appealing. Municipalities with the experience of having a successful charter commission in the past may have more inclination to use this route again, while towns that did not find the charter commission route responsive may want to use the "home rule petition"/special act route.

The general belief is that the "special act route" is faster, since the local legislative body approval and state legislature/governor approval can be achieved in one year, while a charter commission taking the maximum amount of time available (18 months) will not see its proposal on a ballot until 2 years following its election. However, study committees may take longer than one year. For example, the committee in Bridgewater worked for almost two years before presenting its proposals to the town meeting in the fall of 2009.

Commonalities in the Charter Reform Processes

Whether it is an elected charter commission, an appointed study committee, the chief executive, or the local legislative body, some entity must direct the charter preparation process. While an elected charter commission has certain powers and duties as defined in statute, such a commission has no special status regarding what can be included in a charter.

Thus, almost all home rule and special act charters address the same subject matter, most often in very similar ways. The fulcrum questions of such undertakings often include:

- The legislative body: If it is a representative body, such as a representative town meeting or city/town council, the issues of size, composition, and term must be addressed.

- **The chief executive:** In a town, the size of the board of selectmen may be an issue; in cities, the issue of combining the political and managerial responsibilities in an elected mayor vs. the preference for a professional focus on operations, fiscal conditions, and development by establishing a manager position will be crucial. Electing a mayor and the appointment of a chief operating officer could address both of these preferences.
- **Centralization vs. dispersion of authority:** Whether voters continue to elect certain offices, boards, and commissions is also a subject of deliberations. The overwhelming trend in charter adoption is to eliminate many elected offices and replace them with appointments by the chief executive. Most charters do provide transitional provisions allowing those in office at the time the charter is adopted to complete the term to which elected before the appointment provisions take effect. Some of the impetus for this type of change reflects the emphasis on professional training and experience, as well as certification, and ongoing continuing education requirements in many municipal positions.

To Avoid Reinventing the Wheel

As the Home Rule Amendment marks its 44th year in effect, the examples from which communities can learn are now numerous and cover the gamut from very small towns to some of the larger cities. [The Department of Housing and Community Development](#) also maintains a repository of all home rule charter proposals (adopted or not) and has a collection of many of the special act charters as well. There is also the guidance available from the responses the [Attorney General](#) provides to charter commissions regarding the proposal's consistency with state law.

Communities contemplating charter change ought to speak with officials in nearby communities who have undertaken charter change and/or now operate under a home rule or special act charter. Such practical advice from those who have undertaken the exercise is a valuable source of information for those looking to do the same.

The process of adopting or revising a charter is a challenging one for municipalities. This is partially deliberate, to ensure that it is difficult for mistakes to make it into a municipality's fundamental structure, but it is also partially a result of the accumulation of hundreds of years of evolving state and local laws and procedures in the Commonwealth.

Despite the challenges, every year a handful of municipalities undertake charter revisions or reforms and others undergo regularly-scheduled charter reviews. Understanding the legal options for charter change and the specific pros and cons of each option is critical for any public official or citizen contemplating an effort to change the charter of a Massachusetts municipality.

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Editor's note: this article represents the opinions and conclusions of the author and not those of the Department of Revenue.

[1] This Open Meeting Law is only effective through June 30, 2010. As of July 1, 2010, the new Open Meeting Law is [M.G.L. c. 30A, §§ 18-25](#).