

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FOURTH LEGISLATURE

Legislative Document

No. 85

H. P. 66

House of Representatives, January 8, 1969

Referred to Committee on Legal Affairs. Sent up for concurrence and ordered printed.

BERTHA W. JOHNSON, Clerk

Presented by Mr. Hichens of Eliot.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-NINE

AN ACT to Grant a Charter to the Town of South Berwick.

Be it enacted by the People of the State of Maine, as follows:

**COUNCIL-MANAGER CHARTER OF THE TOWN OF
SOUTH BERWICK**

ARTICLE I

Grant of Powers to the Town

Sec. 1. Incorporation. The inhabitants of the Town of South Berwick shall continue to be a body politic and corporate by the name of the Town of South Berwick, and shall have, exercise and enjoy all the rights, immunities, powers, privileges and franchises and shall be subject to all the duties, liabilities and obligations provided for herein, or otherwise, pertaining to or incumbent upon said town as a municipal corporation or to the inhabitants or municipal authorities thereof; and may enact reasonable bylaws, regulations and ordinances for municipal purposes, not inconsistent with the Constitution and laws of the State of Maine, and impose penalties for the breach thereof, not exceeding \$100 in any one case, to be recovered for such uses as said bylaws, regulations or ordinances shall provide.

Sec. 2. Powers and duties. The administration of all the fiscal, prudential and municipal affairs of said town, with the government thereof, except the general management, care, conduct and control of the schools of said town, and also except as otherwise provided by this charter, shall be and are vested in one body of 5 members, which shall constitute and be called the town council, all of whom shall be inhabitants of said town, and shall be sworn in the manner hereinafter prescribed.

The members of the town council shall be and constitute the municipal officers of the Town of South Berwick for all purposes required by statute and, except as otherwise herein specifically provided, shall have all powers and authority given to, and perform all duties required of, municipal officers under the laws of this State.

All other powers now or hereafter vested in the inhabitants of said town and all powers granted by this charter, except as herein otherwise provided, shall be vested in said town council.

ARTICLE II

Town Council

Sec. 1. Number, election, term. The town council shall be composed of 5 members, each of whom shall be elected by the registered voters of the entire town. Each member shall be elected for a term of 3 years and until his successor is elected and qualified, except that, at the first election after the adoption of this charter, the 2 members-elect receiving the most votes shall serve 3 years, the 2 members-elect receiving the next highest number of votes shall serve 2 years, and the one member-elect receiving the next highest number of votes shall serve for one year. In the case of an equal number of votes, the relative position of the members-elect shall be determined by lot.

Sec. 2. Qualifications. Councilmen shall be qualified voters of the town and shall reside in the town during their term of office. They shall hold no office of emolument or profit under the town charter or ordinances. In case of a vacancy caused by death, resignation, removal from town or removal from office as hereinafter provided, of any member of the town council more than 6 months prior to the next regular municipal election, the vacancy shall be filled by a special election for the unexpired portion of the term. In the event such vacancy occurs less than 6 months prior to the next regular municipal election, the vacancy may be filled by a special election for the unexpired portion of the term. Such election shall be called and held and nominations made as in regular municipal elections.

Any member of the town council who shall be convicted of a felony or a misdemeanor involving moral turpitude while in office shall, after due notice of no less than 14 days and hearing before the town council and the production of the records of such conviction, forfeit his office.

Sec. 3. Enumeration of powers. Without limitation of the foregoing, the council shall have the power to:

I. Appoint and remove the town manager, the town clerk and the town attorney, all of whom shall serve at the will of the appointing power.

II. The council shall act as a division of assessment, the head of which shall be the chairman of the town council. The council shall also serve as overseer of the poor.

III. Provide for an annual audit.

IV. Appoint the planning board and the board of zoning appeals.

V. By ordinance create, change and abolish offices, departments and agencies, other than those offices, departments and agencies established by this charter. The council by ordinance may assign additional functions or duties to offices, departments or agencies established by this charter, but may not discontinue or assign to any other office, department or agency any function or duty assigned by this charter to a particular office, department or agency.

VI. Make, alter and repeal ordinances, including the power to enact ordinances providing for the grant of licenses and permits for the conduct of any business, as set forth in the statutes of the State of Maine, for such periods of time and in accordance with such rules and regulations not inconsistent with law and upon payment by the licensee of such fees as the town council may establish in such ordinance.

VII. Inquire into the conduct of any office, department or agency of the town and make investigation as to municipal affairs.

VIII. Recommend the annual budget to the town meeting.

IX. Adopt and modify the official maps of the town.

Sec. 4. Compensation. Councilmen shall receive \$10 for each council meeting upon attendance not to exceed in the aggregate \$200 per year in full for their services. Such compensation may be changed by vote on an article contained in the warrant for said purpose at the annual town meeting. The town council by order shall fix the salaries of officials appointed by the town council, including the salary of the town manager for his services as such and for all other services rendered by him. Salaries of the appointees of the town manager shall be fixed by the town manager, subject to approval of the council.

Sec. 5. Induction of council into office. The town council shall meet at the usual place for holding meetings within 5 days following the regular town election, and at said meeting councilmen-elect shall be sworn to the faithful discharge of their duties by a justice of the peace or by the town clerk.

Sec. 6. Council to be judge of qualifications of its members. The council shall be the judge of the election and qualifications of its members and for such purpose shall have the power to subpoena witnesses and require production of records, but the decision of the council in any such cases shall be subject to review by the courts.

Sec. 7. Regular meetings. The town council shall, at its first meeting or as soon as possible thereafter, establish by resolution a regular place and time for holding its regular meetings, and shall meet regularly at least once a month. It shall also provide a method for calling special meetings.

Sec. 8. Rules of procedure; journal. The council shall determine its own rules and order of business. It shall keep a record of its proceedings, including all votes, and the record shall be open to public inspection.

Sec. 9. Chairman. At its first meeting, or as soon thereafter as practicable, the council shall elect, by majority vote of the entire council, one of its mem-

bers as chairman for the ensuing year and the council may fill, for an unexpired term, any vacancy in the office of chairman that may occur. The chairman shall preside at the meetings of the council, and shall be recognized as head of the town government for all ceremonial purposes, and by the Governor for purposes of military law, but he shall have no regular administrative duties. He shall be entitled to vote, and his vote shall be counted upon all matters and things as a vote of other members of the council. In the temporary absence or disability of the chairman, the town council may elect a chairman pro tempore, from among its members, and he shall exercise the powers of chairman during the temporary absence or disability of the chairman.

Sec. 10. Quorum. A majority of the town council shall constitute a quorum for the transaction of business, but a smaller number may adjourn from time to time or may compel attendance of absent members. At least 24 hours' notice of the time and place of holding such adjourned meeting shall be given to all members who were not present at the meeting from which adjournment was taken.

Sec. 11. Public hearing on ordinances. At least one public hearing, notice of which shall be given at least 7 days in advance by publication in a newspaper having circulation in said town, shall be held by the council before an ordinance shall be passed, but nothing contained herein shall be deemed to require publication of the ordinance itself. Any such ordinance shall not be effective until 30 days after such passage.

The town council may, by vote of 4 of its members, pass emergency ordinances to take effect at the time indicated therein. Such emergency ordinances shall contain a section in which the emergency is set forth and defined. The declaration of such emergency by the town council shall be conclusive.

Sec. 12. Town clerk. In addition to the statutory duties required of the town clerk, whose place of business shall be the town office, the town clerk shall act as clerk of the council and shall keep a public record of all proceedings of the council, including all votes. The Town of South Berwick shall provide for a salary to be paid to the clerk as full compensation, in which case all fees accrue to said town.

Sec. 13. Independent annual audit. Prior to the end of each fiscal year, the council shall designate the State Department of Audit or private certified accountants who, as of the end of the fiscal year, shall make an independent audit of accounts and other evidences of financial transactions of the town government and shall submit their report to the council, the town meeting and the town manager. Such accountants shall not maintain any accounts or records of the town business, but shall post-audit the books and documents kept by any office, officer, department or agency of the town government.

ARTICLE III

Town Manager

Sec. 1. Appointment; qualifications; powers and duties. The town manager shall be chosen by the town council solely on the basis of his

character and his executive and administrative qualifications, and may or may not be a resident of the Town of South Berwick or of the State of Maine at the time of his appointment. In addition to his duties as town manager, he shall be road commissioner, tax collector, town treasurer and agent for the overseers of the poor. No councilman shall receive appointment to the office of town manager during the term for which he shall have been elected nor within one year after the expiration of his term, nor shall any member of the town council act in that capacity. The town manager shall give bond for the faithful discharge of his duties to the Town of South Berwick in such sum as the town council shall determine and direct, and with surety or sureties to be approved by the town council. The premium on his bond shall be paid by the town. He shall be the administrative head of the town and shall be responsible to the town council for the administration of all departments assigned to him.

His powers and duties shall be as follows :

I. Appoint, prescribe the duties of, and, when necessary for the good of the service, remove all officers and employees of the town appointed by him. Such action shall be subject to review by the council.

II. Prepare the budget annually, submit it to the council and be responsible for its administration after adoption.

III. Prepare and submit to the council, as of the end of the fiscal year, a complete report on the finances and administrative activities of the town for the preceding year, and cause such annual report to be published and made available to the public as promptly as possible after the close of the fiscal year.

IV. Attend the meetings of the council, except when his removal is being considered, and keep the council advised of the financial condition and future needs of the town and make such recommendations as may seem to him desirable.

V. See that all laws and ordinances governing the town are faithfully administered.

VI. Act as purchasing agent for all departments of the town with the advice of the individual department heads and utilizing cooperative purchasing arrangements where feasible.

VII. Perform such duties as may otherwise be prescribed by this charter or required of him by the council, not inconsistent with this charter.

VIII. Prepare an administrative code, submit it to the council and be responsible for its administration after adoption.

Sec. 2. Removal. The town manager may be removed for cause by the council in accordance with the provisions of the statutes of the State of Maine relating to the removal of a town manager.

Sec. 3. Department heads. All statutory officers and department heads, other than those listed in Article II, section 3, subsection I, shall be appointed by the town manager, subject to confirmation by the town council, and the same shall be subject to removal for just cause.

Sec. 4. Council not to interfere in appointment or removals. Neither the council nor any of its members shall direct or request the appointment of any person to or his removal from office by the manager or by any of his subordinates. Except for the purpose of inquiry, the council and its members shall deal with the administrative service solely through the manager, and neither the council nor any member thereof shall give orders to any of his subordinates.

Sec. 5. Vacancy in office of town manager. During any vacancy in the office of town manager, and during the absence or disability of the town manager, the town council shall designate a properly qualified person to perform the duties of manager and fix his compensation. While so acting, he shall have the same powers and duties as those given to and imposed on the town manager. Before entering his duties, he shall give bond to the Town of South Berwick in a sum and with surety or sureties to be approved by the town council. The premium on said bond is to be paid by the town.

ARTICLE IV

Budget

Sec. 1. Fiscal year. The fiscal year of the town government shall begin the first day of January and shall end on the 31st day of December of each calendar year, or such other fiscal year as the council may decide. Such fiscal year shall constitute the budget and accounting year as used in this charter. The term "budget year" shall mean the fiscal year for which any particular budget is adopted and in which it is administered.

Sec. 2. Preparation and submission of the budget. The town manager, at least 35 days prior to the beginning of each budget year, shall submit to the council a budget and an explanatory budget message. This budget shall be compiled from detailed information furnished by the administrative officers and boards on blanks, the forms of which shall be designated by the manager. This budget shall contain :

I. Exact statement of the financial condition of the town.

II. An itemized statement of appropriations recommended for current expenses, and for permanent improvements, with comparative statements in parallel columns of estimated expenditures for the current year and actual expenditures for the next preceding fiscal year. An increase or decrease in any item shall be indicated.

III. An itemized statement of estimated revenue from all sources, other than taxation, and a statement of taxes required, comparative figures from current and next preceding year.

IV. Such other information as may be required by the town council.

The proposed budget prepared by the manager shall be reviewed by the town council which shall approve the budget with or without amendments. The complete town budget as approved by the town council shall be published and the town council shall fix the time and place for holding a public hearing for the budget, and shall give public notice of such hearing. The council shall

then review the budget and recommend it, with or without change, to the annual town meeting.

Sec. 3. Budget establishes appropriations. From the date of adoption of the budget, the several amounts stated therein as proposed appropriations shall be and become appropriated to the several agencies and purposes therein named.

Sec. 4. Budget establishes amount to be raised by property tax; certification to town assessor. From the date of adoption of the budget, the amounts stated therein as the amount to be raised by property tax shall constitute a determination of the amount of the levy for the purposes of the town in the corresponding tax year. A copy of the budget as finally adopted shall be certified by the manager and filed by him with the town assessors, whose duty it shall be to levy such taxes for the corresponding tax year.

Sec. 5. Budget summary. At the head of the budget there shall appear a summary of the budget, which need not be itemized further than by principal sources of anticipated revenue, stating separately the amount to be raised by property taxes, and shall be itemized also by departments and kinds of expenditures, in such a manner as to present to taxpayers a simple and clear summary of the detailed estimates of the budget.

Sec. 6. Expenditures and departmental revenue. The budget for all departments shall include all proposed expenditures; and the town meeting shall make a gross appropriation for each department for the ensuing fiscal year. The gross appropriation for each department shall not be exceeded except by consent of the council.

Sec. 7. Work program; allotments. Before the beginning of the budget year, the head of each office, department or agency shall submit to the town manager a work program for the year, which program shall show the requested allotments of appropriations for such office, department or agency, by stated periods, for the entire budget year. The town manager shall review the requested allotments of appropriations for such office, department or agency, by stated periods, for the entire budget year. The town manager shall review the requested allotments in the light of the work program of the office, department or agency concerned, and may revise, alter or change such allotments before approving same. The aggregate of such allotments shall not exceed the total of appropriations available to said office, department or agency for the budget year.

Sec. 8. Transfer of appropriations. At the request of the manager and within the last 3 months of the budget year, the council may, by resolution, transfer any unencumbered appropriation balance or portion thereof between general classification of expenditures within a department.

Sec. 9. Interim expenditures. In the period between the beginning of the fiscal year and the appropriation of funds, the council may authorize expenditures for current departmental expenses chargeable to the appropriations for the year when made, in amounts sufficient to cover the necessary expenses of the various departments.

ARTICLE V

Tax Administration

Sec. 1. Assessor. There shall be established a division of assessment subject to the provisions of Article II, section 3, subsection II. The assessors, appointed as hereinbefore provided, shall exercise the same powers and be subject to the same duties and liabilities that similar officers of the several towns and cities in the State may exercise, and may now or hereafter be subject to, under the laws of the State.

Sec. 2. Board of assessment review. The town council shall constitute the board of assessment review.

Sec. 3. Board of assessment review; powers and duties. The board of assessment review shall have the power to:

I. Review, on complaint of property owners, and revise assessments for the purpose of taxation of real and personal property within the town limits made by the town assessor;

II. Administer oaths;

III. Take testimony;

IV. Hold hearings;

V. Adopt regulations regarding the procedure of assessment review, not inconsistent with statutory provisions.

ARTICLE VI

Nominations and Elections

Sec. 1. Municipal elections. The regular election for the choice of members of the town council and board of school directors shall be held in March of each year.

Sec. 2. Nominations. Any qualified voter of the town may be nominated for the council or board of school directors in accordance with the statutes of the State of Maine.

Sec. 3. Conduct of municipal elections. The provisions of the statutes of the State of Maine relating to the qualifications of voters, the registration of voters, the nomination for any office, the manner of voting, the duties of the election officers and all other particulars relative to preparation for, conducting and management of elections, so far as they may be applicable, shall govern all municipal elections, except as otherwise provided in this charter.

Sec. 4. Voting places. The voting places for municipal elections shall be those which have been established for state elections.

Sec. 5. Election officials. The town council shall, 10 days before any election, appoint a warden and clerk, in addition to the regular ballot clerks, for each voting place.

ARTICLE VII

The Town Meeting

Sec. 1. Annual and special town meetings. An annual town meeting for the consideration of the budget and the transaction of other town business shall be held on a Saturday in March. The annual and special town meetings shall be called by the council in the manner provided for calling town meetings in accordance with the provisions of the statutes of the State of Maine.

Sec. 2. When action by town meetings required. The annual budget, any appropriation of \$1,000 or more in addition to or supplementary to the annual budget appropriation, the issuance of bonds or notes, except notes in anticipation of taxes to be paid within the fiscal year in which issued, shall become effective only after it has been adopted at a town meeting by the vote of a majority of those voting at such meeting. The town meeting shall not increase the amount of any appropriation above the amount recommended by the council nor make any appropriation not recommended by the council and shall not increase the amount of any bond issue above the amount recommended by the council.

Sec. 3. Town meeting—method of abolishing. At any time after the adoption of this charter, not less than 10% of the registered voters of the town may petition, over their personal signatures, for a special town meeting to vote upon the question of submitting to a referendum vote on the ballot at a special town election the proposition of abolishing the town meeting. The council shall call a public hearing to be held within 30 days from the date of the filing such petition with the town clerk, and shall within 14 days after said public hearing call a special town meeting for the purpose of submitting to a referendum vote the question of abolishing the town meeting in the Town of South Berwick. If at such special election a majority of the voters of the town voting on the question shall vote for the abolition of the town meeting of the Town of South Berwick, the powers heretofore vested in the town meeting shall be conferred upon and exercised by the town council. Notwithstanding any of the provisions of this section, the council shall not call any special town meeting within 30 days of the date of the annual town meeting.

ARTICLE VIII

Initiative and Referendum

Sec. 1. Petition for overrule of action of council. All ordinances, resolutions or votes, except those making appointments or removals or regulating exclusively the internal procedure of the council, shall be subject to overrule by a referendum as follows:

If, within 10 days after the enactment of any such ordinance, resolution or vote, a petition signed by not less than 10% of the registered voters of the Town of South Berwick is filed with the town clerk requesting its reference to a referendum, the council shall call a public hearing to be held within 30 days from the date of the filing of such petition with the town clerk and shall, within 14 days after said public hearing, call a special town meeting for the purpose of submitting to a referendum vote the question of adopting such

ordinance, resolution or vote. Pending action by the town meeting, the referred ordinance, resolution or vote shall be suspended from going into operation until it has received a vote of the majority of the voters on said question.

Sec. 2. Petition for enactment of ordinances. Subject to the provisions of section 1, not less than 10% of the registered voters of the town may at any time petition, over their personal signatures, for the enactment of any proposed lawful ordinance by filing such petition, including the complete text of such ordinance, with the town clerk. The council shall call a public hearing to be held within 30 days from the date of the filing of such petition with the town clerk, and shall within 30 days after said public hearing call a special town meeting for the purpose of submitting to a referendum vote the question of adopting such ordinance, unless prior to the call of said town meeting, such ordinance shall be enacted by the council. Such ordinance shall take effect on the 10th day after the conclusion of such referendum provided a majority of those voting thereon shall have voted in the affirmative.

Any such proposed ordinance shall be examined by the town attorney before being submitted to referendum. The town attorney is authorized to correct the form of such proposed ordinance for the purpose of avoiding repetitions, unconstitutional provisions, and to assure accuracy in its text and references and clearness and preciseness in its phraseology, but he shall not materially change its meaning and effect.

Sec. 3. Form of ballot. The form of the ballot for the proposed ordinance, resolution, vote or charter amendment shall be substantially as follows:

“Shall the proposed ordinance (resolution, vote or charter amendment), a copy of which is printed herein or attached hereto, be adopted?”

FOR THE ORDINANCE

AGAINST THE ORDINANCE



The voter shall write a cross or check mark in the appropriate box.

ARTICLE IX

General Provisions

Sec. 1. Summons before town council. The clerks of the Supreme Judicial and Superior Courts may issue a summons for witnesses to attend and produce books, documents and papers at any meeting of the town council for the Town of South Berwick at which a hearing is had on any matter regarding any alleged dereliction of duty by town officers or employees. On complaint of failure to obey summons filed with any Justice of the Superior Court, said justice, if he finds failure to obey said summons to be without reasonable excuse, shall impose a fine of not less than \$10 nor more than \$100, or imprisonment for not more than 30 days, or both.

Sec. 2. Oath of office. Every officer of the town shall, before entering upon the duties of his office, take and subscribe to the following oath or affirmation, to be filed and kept in the office of the town clerk:

"I solemnly swear (or affirm) that I will support the Constitution and will obey the laws of the United States and of the State of Maine; that I will, in all respects, observe the provisions of the charter and ordinances of the Town of South Berwick and statutes of the State of Maine, and will faithfully discharge the duties of the office of _____."

Sec. 3. Ordinances not inconsistent continue in force. All ordinances of the Town of South Berwick in force at the time when this charter takes effect, not inconsistent with the provisions of this charter, shall continue in force until amended or repealed.

Sec. 4. Removal of officers and employees. With the exception of the town manager, whose removal is provided for in accordance with the statutes of the State of Maine, any statutory officer, department head or employee may be removed by the appropriate appointing body or officer at any time.

Sec. 5. Continuance of present administrative officers. All persons holding administrative office at the time this charter takes effect shall continue in office and in the performance of their duties until provisions shall have been made in accordance therewith for the performance of such duties or the discontinuation of such office.

Sec. 6. Expiration of term of present elected officials. The term of the present elected town officials shall expire at the annual meeting in March, 1970.

Sec. 7. Existing contracts not invalidated, unless inconsistent. All rights, actions, proceedings, prosecutions and contracts of the town or any of its departments, pending or unexecuted when this charter goes into effect and not inconsistent herewith, shall be enforced, continued or completed in all respects as though begun or executed hereunder.

Sec. 8. Short title. This charter shall be known and may be cited as the "Council-Manager Charter of the Town of South Berwick". The clerk shall cause it to be printed and made available to the public promptly.

Sec. 9. Separability clause. If any portion of this Act shall be held to be invalid, such decision shall not affect the validity of the remaining portions thereof.

Sec. 10. Repealing clause. All Acts and parts of Acts of the private and special laws of Maine relating to the Town of South Berwick, inconsistent with the provisions of this charter, are repealed.

Referendum; effective date; certificate to Secretary of State. This Act shall take effect 90 days after adjournment of the Legislature, only for the purpose of permitting its submission to the legal voters of the Town of South Berwick at any special town meeting or state-wide election held before January 2, 1970, and warrants shall be issued for such town meeting in the manner now provided by law for the holding of municipal elections, notifying and warning the qualified voters of said town to meet in said town, there to cast their ballots on the approval or rejection of this Act.

The town clerk shall prepare the required ballots, on which he shall reduce the subject matter of this Act to the following question: "Shall 'An Act to Grant a Charter to the Town of South Berwick', passed by the 104th Legislature, be accepted?" The voters shall indicate by a cross or check mark placed against the words "Yes" or "No" their opinion of the same. This Act shall take effect for the purpose of nominating and electing officers hereunder immediately upon its acceptance by a majority of the legal voters voting at said election, and for all other purposes this Act shall take effect immediately following the first election held under the provisions of this charter at the annual meeting in March, 1970.

The result of the vote shall be declared by the municipal officers of the Town of South Berwick and due certificate thereof shall be filed by the town clerk with the Secretary of State.