

STAFF REPORT



To: Bedford Town Council
From: Rick Sawyer, Town Manager
Date: January 6, 2022
Re: **Budget Process Discussion**

BACKGROUND

The Council has been asked through a series of emails and a public comment at the last meeting to consider changing the way in which the budget is approved from Budgetary Town Meeting to Official Ballot (more commonly known as SB2 which was the number of the Senate Bill that provided for this type of voting).

The Town Attorney later changed his opinion to be a revision not an amendment.

DISCUSSION

This item was added to the agenda so that the Council could discuss the Official Ballot option and any other Charter modifications that you may want to discuss. ~~The Town Attorney has confirmed that movement to an Official Ballot form of government would be done through the Charter amendment process.~~ Charter amendments require the Council to hold a public hearing with 7 days advanced notice in the newspaper and additional hearings with notice should changes be made at the first hearing. Amendments also require approval of the language by the Secretary of State, Attorney General, and Department of Revenue Administration who are provided 45 days to review the matter. The Town Attorney has indicated that there are no provisions to conduct amendments at special elections.

Changing to having the Council being fully responsible for the budget (like Derry and Durham) or becoming a city would be done through the Charter revision process. Charter revisions require the formation of a Charter Commission with 9 members elected who then take time to review the matter and make a preliminary report by October 15th following public hearings and a final report by the following January 15th. Charter revisions also require town attorney review and approval of the same three state agencies noted for an amendment.

Relevant Statutes that apply are Section 40:14 and Chapter 49-B (attached). Bedford has made a number of Charter amendments but has not made a revision since the Charter was adopted to my knowledge. The Council would need to act extremely quickly and likely not have State agency review back before the ballots would need to be printed if any action is proposed for 2022.

COST AND FUNDING

There is no cost associated with this discussion.

RECOMMENDATION

The only recommendation is that the Council should discuss the topic to see if there is consensus as how or if to move forward with any Charter amendments or revisions.

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EXHIBITS ...

- A. RSA Section 40:14
- B. RSA Chapter 49-B

TITLE III

TOWNS, CITIES, VILLAGE DISTRICTS, AND UNINCORPORATED PLACES

CHAPTER 40

GOVERNMENT OF TOWN MEETING

Optional Form of Meeting-Official Ballot Referenda

Section 40:14

40:14 Method of Adopting Official Ballot Referendum Form of Meeting. –

I. This subdivision may be adopted by any local political subdivision as defined in RSA 40:12. A 3/5 majority of those voting on the question shall be required to adopt this subdivision. Only votes in the affirmative or negative shall be included in the calculation of the 3/5 majority.

II. Adoption of this subdivision shall be deemed to constitute a vote to conduct the election of town officers by official ballot under RSA 669:14.

III. The local political subdivision shall place the question on the warrant of the annual meeting under the procedures set out in RSA 39:3 or RSA 197:6. Voting on the question shall be by ballot, but the question shall not be placed on the official ballot used to elect officers. Polls shall remain open and ballots shall be accepted by the moderator for a period of not less than one hour following the completion of discussion on the question.

IV. A public hearing shall be held by the local governing body on the question at least 15 days, but not more than 30 days, before the question is to be voted on. In multi-town districts, a public hearing shall be held in each town embraced by the district, none of which shall be held on the same day. Notice of the hearing shall be posted in at least 2 public places in the town and at least 2 public places in each town of multi-town districts, and published in a newspaper of general circulation at least 7 days prior to the date of the hearing.

V. The wording of the question shall be: "Shall we adopt the provisions of RSA 40:13 (known as SB 2) to allow official ballot voting on all issues before the (local political subdivision) on the second Tuesday of (month)?"

VI. If a 3/5 majority of those voting on the question vote "yes," RSA 40:13 shall apply within the local political subdivision at the annual or special meeting next following. Only votes in the affirmative or negative shall be included in the calculation of the 3/5 majority.

VII. Any local political subdivision which has adopted RSA 40:13 may consider rescinding its action in the manner described in paragraphs III-VI, except that the question shall be placed on the official ballot. The wording of the question shall be: "Shall we rescind the provisions of RSA 40:13 (known as SB 2), as adopted by the (local political subdivision) on (date of adoption), so that the official ballot will no longer be used for voting on all questions, but only for the election of officers and certain other questions for which the official ballot is required by state law?" A 3/5 majority of those voting on the question shall be required to rescind the provisions of this subdivision, except in the case of repeal by charter enactment under RSA 49-D. Only votes in the affirmative or negative shall be included in the calculation of the 3/5 majority.

VIII. For any town which has adopted a charter under RSA 49-D:3, the method of adoption shall be the manner of amending the charter as provided under RSA 49-B.

IX. In the event that an alternative method for the adoption of official ballot voting exists under the laws of this state, then once the requirements are met for inclusion of the question on the warrant for annual meeting of whether to adopt this subdivision, neither the governing body nor the legislative body shall commence action to adopt official ballot voting through such alternative method until a final vote is taken on the warrant article. If procedures have been initiated to adopt official ballot voting under an alternative law of this state, then neither the governing body nor the legislative body shall commence action to adopt this subdivision until such alternative procedures are exhausted.

X. In a local political subdivision which has not adopted RSA 40:13 and in which the adoption of RSA 40:13 is to be voted on, the question shall specifically state whether the date for local elections and the second session shall be the second Tuesday in March, the second Tuesday in April, or the second Tuesday in May.

XI. A local political subdivision which has adopted the provisions of RSA 40:13 may change the date for local elections and the second session as follows:

(a) The question may be inserted on the warrant for either an annual or special meeting, either by the local governing body or by petition under RSA 39:3 or RSA 197:6.

(b) A public hearing shall be held by the local governing body on the question at least 15 days, but not more than 30 days, before the question is to be voted on. In multi-town districts, a public hearing shall be held in each town embraced by the district, none of which shall be held on the same day. Notice of the hearing shall be posted in at least 2 public places in the town, or in at least 2 public places in each town of multi-town districts, and published in a newspaper of general circulation at least 7 days prior to the date of the hearing.

(c) The wording of the question shall be substantially similar to the following: "Shall we change the date for elections and the second session from the second Tuesday in _____ to the second Tuesday in _____, which would change the date for the first session to a date between the first and second Saturdays after the last Monday in _____, inclusive?"

(d) A simple majority in the affirmative of those voting on the question shall be required to change the date; provided, however, that if the question appears on the ballot for a multi-town school district, the vote in each town or city comprising the district shall be tallied separately, and this section shall not be deemed adopted by the district unless it receives a majority vote from each and every such town and city, tallied separately. Only votes in the affirmative or negative shall be included in the calculation of the majority.

(e) A vote to change the dates of the meeting shall apply to the annual meeting next following the vote.

Source. 1995, 164:1, eff. July 31, 1995. 1997, 318:6, 7, 8, eff. Aug. 22, 1997. 1999, 34:1, 2, eff. July 10, 1999. 2000, 16:6, 7, eff. April 30, 2000. 2010, 262:6, eff. Sept. 4, 2010. 2019, 131:1, 2, eff. Aug. 24, 2019.

TITLE III

TOWNS, CITIES, VILLAGE DISTRICTS, AND UNINCORPORATED PLACES

Chapter 49-B

HOME RULE-MUNICIPAL CHARTERS

Section 49-B:1

49-B:1 Purpose and Intent. – It is the purpose of this chapter to implement the home rule powers recognized by article 39, part first, of the constitution of the state of New Hampshire. To that end, the general court hereby provides a vehicle whereby a municipality may adopt a form of government that best addresses local needs. At the same time, however, the general court recognizes a need to require uniform procedures and practices when there is a corresponding state interest. Therefore, this chapter is intended only to provide a procedural framework by which a city or town may amend its actual form of government. Nothing in this chapter shall be construed to create any power in, or confer any power upon, any city or town beyond that necessary to carry out the amendment of a charter or form of government as set forth in this chapter. The general laws of this state shall remain in full force and effect, and they shall be construed to be consistent with this chapter to the greatest extent possible in the effectuation of this chapter's stated purpose. Accordingly, this chapter shall be strictly interpreted to allow towns and cities to adopt, amend, or revise a municipal charter relative to their form of government so long as the resulting charter is neither in conflict with nor inconsistent with the general laws or the constitution of this state.

Source. 1979, 241:1. 1988, 223:1, eff. June 29, 1988.

Section 49-B:2

49-B:2 Scope of Authorization; Definitions. –

- I. Any incorporated town or city, regardless of population, shall be entitled to exercise the home rule powers recognized by article 39, part first, of the New Hampshire constitution, and implemented through this chapter, to create a charter commission and to present to its voters by referendum a municipal charter, in which they may establish either a town or city government.
- II. If the proposed charter denominates the municipality as a town, the charter shall be prepared pursuant to RSA 49-D.
- III. If the proposed charter denominates the municipality as a city, the charter shall be prepared pursuant to RSA 49-C.
- IV. In this chapter:
 - (a) "Elected body" means the mayor and board of aldermen, mayor and council, and city council in a city adopting a charter under RSA 49-C and a town council or representative town meeting in a town adopting a charter under RSA 49-D.
 - (b) "Governing body" means the board of selectmen, the board of aldermen, or the council in a city or in a town with a town council.
 - (c) "Legislative body" means a town meeting, representative town meeting, city or town council, mayor and council, and mayor and board of aldermen.
 - (d) "Municipality" means a city or a town.
 - (e) "Municipal officers" means the mayor and board of aldermen, mayor and council, and city council in a city, and board of selectmen and town council in a town.
 - (f) "Municipal year" means the fiscal year of the municipality.
 - (g) "Operating budget" means total appropriations, as determined by the department of revenue administration,

exclusive of county and school taxes; principal and interest payments on bonds and notes; and amounts in satisfaction of court judgments.

(h) "Revocation" means the repeal of an entire charter such that the resultant form of government is the form in existence immediately prior to the adoption of the charter being repealed.

Source. 1979, 241:1. 1988, 223:2. 1991, 162:1; 304:3, 4. 2003, 289:9, eff. Sept. 1, 2003. 2014, 292:1, eff. Sept. 30, 2014.

Adoption of Municipal Charter

Section 49-B:3

49-B:3 Procedures for Submitting Question of Establishing Charter Commission to Voters. –

I. In any municipality not operating under a charter governed by RSA 49-C or RSA 49-D, the municipal officers may determine that adoption of a municipal charter is necessary and, by order, submit the question of establishment of a charter commission to the voters as provided in this section; or

II. On the written petition of 25 or more registered voters or 2 percent of the registered voters in the municipality, whichever is less, but in no event fewer than 10 registered voters, the municipal officers shall, by order, submit the question of establishment of a charter commission to the voters as provided in this section. The petition shall read substantially as follows: "Each of the undersigned voters requests the municipal officers to submit to the voters, at the next municipal election, the question of establishment of a charter commission to draft a municipal charter." The petition shall be submitted to the municipal officers by the date indicated below:

(a) For a town with its annual meeting in March, on or before December 15 of the preceding year.

(b) For a town with its annual meeting in April, on or before January 15 of the same year.

(c) For a town with its annual meeting in May, on or before February 15 of the same year.

(d) For any other municipality, at least 90 days before the regular municipal election on which the question is proposed to be submitted. In the case of a municipality with biennial elections, if the petition is submitted during a year in which there are no municipal elections, a special election shall be held at least 90 days after submission.

III. Upon receipt of a petition under paragraph II, the municipal officers shall by order submit the question for establishment of a charter commission to the voters at the next regular municipal election. In the case of an order adopted under paragraph I, the municipal officers shall by order submit the question of establishment of the commission to the voters at the next regular municipal election that is held not less than 60 days after the date of the order. In the case of municipalities with biennial elections, the question shall be submitted at either the next regular municipal election or at a special municipal election that is held not less than 60 days after the date of the order.

IV. The question to be submitted to the voters shall be in substance as follows:

"Shall a charter commission be established for the purpose of establishing a municipal charter?"

V. Notwithstanding any other provision of this chapter, for the purposes of establishing a charter commission to amend or adopt a charter relative to official ballot town council under RSA 49-D:3, I-a, official ballot town meeting under RSA 49-D:3, II-a, budgetary official ballot village district meeting under RSA 52:2-a, or budgetary official ballot school district meeting under RSA 197:5-b only, the question of whether to establish a charter commission and the election of charter commission members shall be placed on the same ballot. No other issues shall be addressed by a charter commission established under this paragraph. The question on the establishment of a charter commission to be submitted to the voters shall be in substance as follows:

"Shall a charter commission be established for the sole purpose of establishing official ballot voting under the current form of government?"

Source. 1979, 241:1. 1991, 304:5, 12. 1995, 53:1. 1998, 343:1. 2003, 289:10, eff. Sept. 1, 2003. 2014, 292:2, eff. Sept. 30, 2014.

Section 49-B:4

49-B:4 Charter Commission; Membership; Procedure; Preliminary Report. –

I. The charter commission shall consist of 9 members, all of whom shall be registered voters of the municipality and elected as hereinafter provided.

(a) Within 5 days after the deadline for requesting a recount of a vote confirming the establishment of a charter commission, or within 5 days after the recount if a recount is requested, the municipal officers shall meet to order a special election to be held on a Tuesday not less than 35 days or more than 60 days after such meeting for the purpose of electing charter commission members provided, however, that in a municipality with biennial elections, the special election shall be held on a Tuesday not less than 25 days or more than 133 days after such meeting. For purposes of this subparagraph, the provisions of RSA 40:4-c relative to recounts shall apply, except that a recount must be requested no later than the first Friday following the vote.

(b) Members shall be elected in the same manner as the municipal officers except that they shall be elected at large and without party designation. The names of the candidates shall be arranged on the ballot in an order determined by lot, publicly selected by the city or town clerk. Declarations of candidacy for the commission shall be filed as provided in RSA 669:19, except that the filing period shall begin on the fourth Wednesday before the election and end on the Friday of the following week.

II. Within 5 days after the deadline under RSA 669:30 for requesting a recount, the municipal clerk shall notify those elected to the charter commission of the date, time, and place of the organizational meeting of the charter commission. However, if a recount is requested, such notice shall be given within 5 days after the last recount is completed. The date, time, and place of the organizational meeting shall be fixed by the clerk. The date shall be at least 7 days and not more than 14 days after the date of the notice. The charter commission shall organize by electing from its members a chairperson, a vice chairperson and a secretary and shall file notice thereof with the municipal clerk. Vacancies occurring on the commission shall be filled by vote of the commission from the voters of the municipality. Members shall serve without compensation but shall be reimbursed from the commission's account for expenses lawfully incurred by them in the performance of their duties.

III. The charter commission may adopt rules and regulations governing the conduct of its meetings and proceedings and may employ such legal, research, clerical, or other employees and consultants as are deemed necessary within the limits of its budget.

IV. (a) A municipality shall provide its charter commission, free of charge, with suitable office space and with reasonable access to facilities for holding public hearings, may contribute clerical and other assistance to such commission, and shall permit it to consult with and obtain advice and information from municipal officers, officials, and employees during ordinary business hours. The municipal officers shall credit to the charter commission's account a sum of at least \$100. A municipality may appropriate additional funds to the charter commission account. Such funds may be raised by taxation, borrowed, or transferred from surplus.

(b) In addition to funds made available by a municipality, the charter commission account may receive funds from any other source, public or private, provided that no contribution of more than \$50 shall be accepted from any source other than the municipality unless the name and address of the person or agency making the contribution and the amount of the contribution are disclosed in writing filed with the clerk. Within 30 days after submission of its final report the charter commission shall file with the clerk a complete account of all its receipts and expenditures for public inspection. Any balance remaining in its account shall be credited to the municipality's surplus account.

V. Before issuing its preliminary report, the charter commission shall hold at least 2 public hearings, scheduled at its discretion. At least one of such hearings shall be for the purpose of receiving information, views, comments, and other pertinent material relative to its functions and at least one shall be for the purpose of explaining, in general terms, its proposed preliminary report and receiving comments on its proposal. The commission may, but is not required to, provide a draft of its preliminary report at the latter hearing. Notice of each such hearing shall be posted in at least 2 public places in the municipality and published in a newspaper of general circulation in the municipality at least 7 days before the date of the meeting.

VI. (a) The charter commission shall file with the municipal clerk a preliminary report including the text of the charter which the commission intends shall be submitted to the voters and any explanatory information the commission deems desirable, and shall provide sufficient copies of the preliminary report to the municipal clerk to permit its distribution to each voter requesting it. The commission shall also file the preliminary report with the secretary of state, the attorney general, and the commissioner of the department of revenue administration as provided in RSA 49-B:4-a, I.

(b) The preliminary report shall include a written opinion by an attorney admitted to the bar of this state that the

proposed charter is not in conflict with the constitution or the general laws. The filing of the preliminary report shall be accomplished by the date indicated below:

- (1) If the charter commission was elected in a town with its annual meeting in March, on or before October 15 of the same year.
 - (2) If the charter commission was elected in a town with its annual meeting in April, on or before November 15 of the same year.
 - (3) If the charter commission was elected in a town with its annual meeting in May, on or before December 15 of the same year.
 - (4) If the charter commission was elected at a biennial municipal election in November, on or before June 15 of the following year.
 - (5) If the charter commission was elected at a special election, or at any election in a municipality not described in subparagraph (b)(1), (2), (3), or (4), within 170 days after its election.
- (c) Upon receipt of the preliminary report, the municipal clerk shall, except as provided in paragraph VII, file a certified copy with the appropriate state officials as provided in RSA 49-B:4-a.

VII. The commission may recommend, in either its preliminary or its final report, that no new charter be adopted. If the commission makes such a recommendation in its preliminary report, the preliminary report shall be deemed a final report and shall not be submitted to the state officials for review under RSA 49-B:4-a. If the commission makes such a recommendation in either the preliminary or final report, no charter question shall be placed on the municipal ballot, and the commission shall take no further action except to wind up its affairs within 60 days after the submission of its report.

Source. 1979, 241:1. 1988, 223:3. 1991, 304:6, 7. 1992, 96:1; 194:1-3. 2003, 25:4. 2006, 22:1, eff. May 30, 2006. 2012, 101:1, eff. May 29, 2012. 2014, 292:2, eff. Sept. 30, 2014.

Section 49-B:4-a

49-B:4-a Review and Approval by State Departments. –

I. The chairman of the charter commission, if any, and otherwise the municipal clerk shall file a report, which shall include the name and address of the clerk and the chairman of the charter commission, with the secretary of state, the attorney general, and the commissioner of the department of revenue administration as follows:

- (a) The chairman of the charter commission shall file a copy of the preliminary report relative to any new municipal charter or charter revision at the same time the preliminary report is filed with the municipal clerk pursuant to RSA 49-B:4, VI.
- (b) Within 10 days after the filing of the report relative to any charter amendment, if initiated by the municipal officers, the municipal clerk shall file a certified copy of the report.
- (c) Promptly after the filing of the petitioners' affidavit relative to a charter amendment, the municipal clerk shall file a certified report consisting of a copy of said affidavit.
- (d) Within 14 days of receipt of such report, the secretary of state, the attorney general, and the commissioner of the department of revenue administration shall notify in writing the municipal clerk and the chairman of the charter commission, if any, of his or her receipt. Within 45 days after the receipt of the report the secretary of state, attorney general, and commissioner of the department of revenue administration shall review the proposed charter, charter revision, or charter amendment to insure that it is consistent with the general laws of this state, and shall give notice to the municipal clerk approving or disapproving the proposed charter.

II. If the secretary of state, the attorney general, or the commissioner of the department of revenue administration does not approve, the proposed charter question shall not be placed on the municipal ballot unless the objections to the proposed charter are resolved as provided in this section. If the proposed charter amendment was initiated by a petition, official petition forms shall not be provided. The secretary of state, attorney general, and commissioner of the department of revenue administration shall specify their objections in writing to the municipal clerk, and to the petitioners' committee if relative to a charter amendment initiated by such petitioners' committee, within the period of time allowed for review and shall offer recommendations for changes in language which would correct any inconsistencies they may find in the proposed charter to be voted upon. Failure to specify objections to a proposed charter within 45 days shall constitute approval by the secretary of state, attorney general, or the commissioner of the department of revenue administration.

III. Upon receiving notice of such objections, the charter commission may make such changes as appear

necessary and resubmit the proposed charter within 30 days to the official or officials who raised the objections. Such officials shall thereafter make reasonable efforts to review the changes and provide notice of approval or disapproval to the municipal clerk in time to enable the charter commission to file its final report by the deadline stated in RSA 49-B:4-b.

IV. The governing body of the municipality may seek judicial review of a decision of the secretary of state, attorney general, or the commissioner of the department of revenue administration by appeal in superior court, pursuant to RSA 49-B:10, IV.

Source. 2014, 292:2, eff. Sept. 30, 2014.

Section 49-B:4-b

49-B:4-b Final Report. –

I. Upon approval from the secretary of state, attorney general, and commissioner of the department of revenue administration under RSA 49-B:4-a, the charter commission shall submit to the municipal officers its final report, which shall include the full text and explanation of the proposed new charter, such comments as the commission deems desirable, an indication of the major differences between the current form of government and the proposed charter, and a written opinion by an attorney admitted to the bar of this state that the proposed charter is not in conflict with the constitution or the general laws. Minority reports, if filed, shall not exceed 1,000 words. The submission of the final report and minority reports, if any, shall be accomplished by the date indicated below:

(a) If the charter commission was elected in a town with its annual meeting in March, on or before January 15 of the following year.

(b) If the charter commission was elected in a town with its annual meeting in April, on or before February 15 of the following year.

(c) If the charter commission was elected in a town with its annual meeting in May, on or before March 15 of the following year.

(d) If the charter commission was elected at a biennial municipal election, on or before September 15 of the following year.

(e) If the charter commission was elected in a municipality not described in subparagraph (a), (b), (c), or (d), within 245 days after its election.

II. Upon the submission of the final report, the municipal officers shall order the proposed new charter to be submitted to the voters at the next municipal election after the filing of the final report, unless the final report recommends that no charter be adopted, as provided in RSA 49-B:4, VII. In the case of municipalities with biennial elections, the charter shall be submitted to the voters at the next regular municipal election or at a special municipal election so long as such election is held at least 45 days after the filing of the final report. If the next regular election is less than 45 days after the filing of the report, the charter shall be submitted at the following regular election.

III. Except as provided in RSA 49-B:4-c, the charter commission shall continue in existence for 60 days after submission of its final report to the municipal officers, or until the date of the election at which the charter is voted upon, whichever is later, for the purpose of winding up its affairs.

Source. 2014, 292:2, eff. Sept. 30, 2014.

Section 49-B:4-c

49-B:4-c Continuation of Charter Commission. –

I. If the charter commission is unable to obtain approval pursuant to RSA 49-B:4-a in time to submit its final report by the date established in RSA 49-B:4-b, or otherwise does not complete its preliminary or final report in accordance with the schedule established in this subdivision, it shall continue in existence for another year. Subject to paragraph II, if the commission's existence continues, any requirements of RSA 49-B:4, V and VI, RSA 49-B:4-a, and RSA 49-B:4-b that have not previously been satisfied shall apply as if the commission had been elected in the second year.

II. A charter commission shall not be extended beyond a second year of existence.

Source. 2014, 292:2, eff. Sept. 30, 2014.

Revision of Municipal Charter

Section 49-B:4-d

49-B:4-d Definition of Revision. –

For purposes of this chapter, a "revision" to a municipal charter shall mean any change to an existing charter that results in a change in the municipality's form of government to any of the following forms:

- I. Traditional town meeting.
- II. Official ballot town meeting.
- III. Town council.
- IV. Official ballot town council.
- V. Budgetary town meeting.
- VI. Representative town meeting.
- VII. City under mayor-alderman plan.
- VIII. City under council-manager plan.
- IX. Any other form hereafter expressly authorized by statute.

Source. 2014, 292:2, eff. Sept. 30, 2014.

Section 49-B:4-e

49-B:4-e Procedure for Revising Charter. –

- I. The municipal officers may determine that a revision of the municipal charter is necessary and, by order, submit the question of establishment of a commission to revise the charter to the voters, in the same manner as provided for the establishment of a charter commission under RSA 49-B:3; or
- II. On the written petition of a number of voters equal to 20 percent of the number of ballots cast in the municipality at the last regular municipal election, but in no event fewer than 10 registered voters, the municipal officers shall, by order, submit the question of establishment of a commission to revise the charter to the voters as provided in this section. The petition shall read substantially as follows: "Each of the undersigned voters requests the municipal officers to submit to the voters, at the next municipal election, the question of establishment of a charter commission to draft a revision to the municipal charter." The petition shall be submitted on or before the date indicated for a petition under RSA 49-B:3, II.
- III. The establishment of a commission to revise the charter, the membership of the commission, and the procedures of the commission shall in all respects be the same as for a commission to draft a new charter under RSA 49-B:3, RSA 49-B:4, RSA 49-B:4-a, and RSA 49-B:4-b, including all dates and time periods thereunder, except that the following question shall be substituted for the question specified in RSA 49-B:3, IV: "Shall a charter commission be established for the purpose of revising or amending the municipal charter?"
- IV. If a commission that has been elected to revise the charter determines that one or more amendments to the charter are required, it may propose such amendments.
- V. A commission to revise the charter shall not be continued under RSA 49-B:4-c.

Source. 2014, 292:2, eff. Sept. 30, 2014.

Amendment of Municipal Charter

Section 49-B:4-f

49-B:4-f Definition of Amendment. – For purposes of this chapter, an "amendment" to a municipal charter shall mean any change to an existing charter that does not constitute a revision under RSA 49-B:4-d.

Section 49-B:5

49-B:5 Charter Amendments, Procedure. –

I. The municipal officers may determine that one or more amendments to the municipal charter are necessary and shall, by order, provide for notice and hearing on them. The notice of the hearing shall be published in a newspaper having general circulation in the municipality at least 7 days prior to the hearing, and shall contain the text of the proposed amendment and a brief explanation. The hearing shall be conducted by the municipal officers or a committee appointed by them. If substantive changes are made to the proposed amendment, a hearing on the modified amendment shall be held. Notice of the hearing and the conduct thereof shall be as provided in this paragraph.

(a) Within 7 days after the last public hearing, the municipal officers or the committee appointed by them shall file with the municipal clerk a report containing the proposed amendment. In the case of a report of an appointed committee, a copy shall be filed with the municipal officers.

(b) Within 7 days after receiving approval from the secretary of state, the attorney general, and the commissioner of the department of revenue administration under RSA 49-B:4-a, the municipal officers may order the proposed amendment to be placed on a ballot at the next regular municipal election. In the case of municipalities with biennial elections, the municipal officers may order amendments to be placed on the ballot at either the next regular municipal election or at a special municipal election that occurs not less than 60 days after the order.

(c) Each amendment shall be limited to a single subject, but more than one section of the charter may be amended as long as it is germane to that subject.

(d) Alternative statements of a single amendment are prohibited.

II. On the written petition of a number of voters equal to at least 15 percent of the number of ballots cast in a municipality at the last regular municipal election, but in no case fewer than 10 voters, the municipal officers shall, by order, provide that proposed amendments to the municipal charter be placed on a ballot in accordance with the procedures set out in paragraphs II-a through V:

(a) Each amendment shall be limited to a single subject but more than one section of the charter may be amended as long as it is germane to that subject.

(b) Alternative statements of a single amendment are prohibited.

II-a. The following procedure shall be used in the alternative method set out in paragraph II:

(a) Any 5 voters of the municipality may file with the municipal clerk an affidavit stating that they shall constitute a petitioners' committee. Such affidavit shall be signed by the members of such committee and an additional 20 voters of the municipality and shall include:

(1) The language of each proposed amendment.

(2) The names and addresses of the committee members.

(3) The address to which all notices to the committee are to be sent.

(b) Each signature on the affidavit required by subparagraph II-a(a) shall be included in the clerk's count of the number of signatures required by paragraph II unless a signatory has signed both the affidavit and the petition, in which case the signature shall be counted only once.

(c) Promptly after the affidavit is filed by the petitioners' committee, the clerk shall file a certified copy of the affidavit, including the proposed amendment, for review of the proposed amendment in accordance with RSA 49-B:4-a. Promptly after receiving approval of the proposed amendment from the state officials under RSA 49-B:4-a, the clerk shall issue petition form blanks to the committee. The petition forms shall read substantially as follows: "Each of the undersigned voters respectfully requests the municipal officers to provide for the amendment(s) of the municipal charter as set out below. If more than one subject is included in a petition, each subject shall be addressed in a separate amendment".

III. (a) The petitioners' committee, or voters of the municipality designated by the committee, may circulate the petition and file it in proper form. Each signature affixed to a petition shall be in ink or other indelible instrument and shall be followed by the place of domicile of the voter with street and number, if any. No petition shall contain any party or political designation.

(b) The clerk shall note the date of each petition form issued and all petitions, unless sooner filed, shall become null and void for every purpose on the 120th day after the date of issue.

(c) Each petition form shall have printed on its back an affidavit to be executed by the circulator, stating that he

personally circulated the paper, the number of signatures thereon, that all the signatures were affixed in his presence, that he believes them to be genuine signatures of the persons whose names they purport to be, that each signer has signed no more than one petition, and that each signer had an opportunity before signing to read the petition.

(d) Petition forms shall be assembled as one instrument and filed at one time with the clerk. The clerk shall note thereon the date of filing.

IV. Within 20 days after the petition is filed, the clerk shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective, shall promptly send a copy of the certificate to the petitioners' committee by mail, and shall file a copy with the municipal officers.

(a) A petition certified insufficient for lack of the required number of valid signatures may be amended once if the petitioners' committee files a notice of intention to amend it with the clerk within 2 days after receiving the copy of his certificate. Within 10 days after the date of filing of the notice of intention, the committee may file a supplementary petition to correct the deficiencies in the original petition. Such supplementary petition shall in form and content comply with the requirements for an original petition under paragraph III.

(b) Within 5 days after the filing of a supplementary petition the clerk shall complete and file a certificate as to its sufficiency in the manner provided for in an original petition.

(c) When an original or supplementary petition has been certified insufficient, the committee may, within 2 days after receiving the copy of the clerk's certificate, file a request with the municipal officers for review. The municipal officers shall inspect the petitions and shall make due certificate thereof, copies of which shall be filed with the municipal clerk and mailed to the committee. The certificate of the municipal officers shall be a final determination of the sufficiency of the petitions.

(d) Any petitions finally determined to be insufficient shall be void. Such petitions shall be stamped void by the clerk and shall be sealed and retained by the clerk in the manner required for secret ballots.

V. (a) Within 10 days of receipt of a report that a petition is sufficient, the municipal officers shall by order provide for and issue notice of a public hearing on the proposed amendment. The notice of the hearing shall be published in a newspaper having general circulation in the municipality at least 7 days prior to the hearing, and shall contain the text of the proposed amendment and a brief explanation. The hearing shall be conducted by the municipal officers and no substantive changes may be made to the amendment.

(b) Within 7 days after the public hearing, the municipal officers shall file with the municipal clerk a report containing the proposed petitioned amendment and shall order the proposed amendment to be placed on the ballot at the next regular municipal election. In the case of municipalities with biennial elections, the municipal officers shall order the amendments to be placed on the ballot at either the next regular municipal election or at a special municipal election that occurs not less than 60 days after the date of the order.

Source. 1979, 241:1. 1988, 223:4, 5. 1991, 304:13. 1992, 96:2, 3. 1995, 53:2. 2005, 38:1. 2008, 230:1, 2, eff. Aug. 19, 2008. 2014, 292:2, eff. Sept. 30, 2014. 2016, 224:1-5, eff. Aug. 8, 2016.

General Provisions Applicable to Charter Actions

Section 49-B:6

49-B:6 Submission to Voters. –

The method of voting at municipal elections when a question relating to a charter revision, a charter adoption, or a charter amendment is involved shall be in the manner prescribed for municipal elections. In a town, the question shall appear on the ballot before any other questions except the election of officers. In a city, the question shall appear in the order determined by the city clerk.

I. In the case of a charter revision or a charter adoption the question to be submitted to the voters shall include a summary prepared by the charter commission which explains both the current form of government used by the municipality and the changes in that form of government which will occur if the charter revision or charter is approved by the voters. The question to be submitted to the voters shall be in substance as follows:

"Shall the municipality approve the (charter revision) (charter) recommended by the charter commission?"

II. (a) Subject to subparagraph (b), in the case of one or more charter amendments, each amendment shall be voted upon separately and the question to be submitted to the voters on each amendment shall be in substance as

follows:

"Shall the municipality approve the charter amendment reprinted (summarized) below?" Each such question shall be followed by the text or a summary of the amendment.

(b) Alternatively, at the discretion of the charter commission, 2 or more amendments may be listed and voted upon together. In such case, the question shall be in substance as follows:

"Shall the municipality approve the charter amendments reprinted (summarized) below?" The question shall be followed by the text or summary of each of the amendments that are being voted upon together.

III. (a) In the case of a charter revision or charter adoption, at least 2 weeks prior to the date of the election the municipal officers shall cause the final report of the charter commission to be printed, shall make copies available to the voters in the clerk's office, and shall post the report in the same manner that proposed ordinances are posted.

(b) In the case of one or more charter amendments, at least 2 weeks prior to the date of the election, the municipal officers shall cause the proposed amendment and any summary thereof to be printed, shall make copies available to the voters in the clerk's office, and shall post the amendment and any summary thereof in the same manner that proposed ordinances are posted.

IV. If at least 3/5 of the ballots cast on any question under paragraph I favor acceptance, the new charter or the charter revision shall become effective as provided in subparagraph (a). If a majority of the ballots cast on any question under paragraph II favor acceptance, the charter amendment shall become effective as provided in subparagraph (b).

(a) Charter revisions, new charters, or repeals of charters adopted by the voters shall become effective immediately for the purpose of conducting necessary elections; otherwise charter revisions, new charters, and repeals of charters shall become effective on the first day of the next succeeding municipal year or as specified in any transition provisions of the charter.

(b) Charter amendments adopted by the voters shall become effective on the first day of the next succeeding municipal year or on a date determined by the municipal officers, whichever occurs first.

Source. 1979, 241:1. 1983, 34:1. 1985, 128:1. 1991, 304:9, eff. Aug. 23, 1991. 2014, 292:2, eff. Sept. 30, 2014.

Section 49-B:7

49-B:7 Recording. – Within 3 days after the results of the election have been declared, the municipal clerk shall prepare and sign duplicate certificates setting forth any charter that has been adopted or revised and any charter amendment approved. One certificate shall be recorded in the office of the secretary of state and one certificate shall be deposited in the office of the municipal clerk.

Source. 1979, 241:1, eff. Aug. 14, 1979.

Section 49-B:8

49-B:8 Ordinance, Power Limited. – Any municipality may, by the adoption, amendment or repeal of ordinances or bylaws, exercise any power or function granted to a municipality by the constitution or general law. No change in the composition, mode of election or terms of office of the legislative body, the mayor or the manager of any municipality may be accomplished by bylaw or ordinance.

Source. 1979, 241:1. 1988, 223:8, eff. June 29, 1988.

Section 49-B:8-a

49-B:8-a Repealed by 1991, 304:15, eff. Aug. 23, 1991. –

Section 49-B:8-b

49-B:8-b Powers of Representative Town Meeting [Omitted]. –

Section 49-B:9

49-B:9 Private, Special, and General Laws. – Private and special laws applying to a specific municipality and general laws which a municipality has the option to adopt or rescind shall continue in force and effect unless specifically repealed by a charter adoption, revision, or amendment under this chapter.

Source. 1979, 241:1. 1988, 223:11, eff. June 29, 1988.

Section 49-B:10

49-B:10 Judicial Review. –

- I. The superior court may, upon petition of 10 voters of the municipality or on petition of the attorney general, enforce this chapter.
- II. A petition for declaratory relief may be brought on behalf of the public by the attorney general or, by leave of the court, by 10 voters of the municipality. In the case of petition of 10 voters, the attorney general shall be served with notice of the preliminary petition for leave, and may intervene as a party at any stage of the proceedings; and the petitioners shall be liable for, but may in the court's discretion also be awarded costs, which may include reasonable attorney's fees.
- III. Judicial review to determine the validity of the procedures whereby any charter is adopted, revised or amended may be had by petition of 10 voters of the municipality brought within 30 days after the election at which such charter, revision or amendment is approved. If no such petition is filed within such period, compliance with all the procedures required by this chapter and the validity of the manner in which such charter adoption, revision or amendment was approved shall be conclusively presumed. No charter adoption, revision or amendment shall be deemed invalid on account of any procedural error or omission unless it is shown that the error or omission materially and substantially affected such adoption, revision or amendments.
- IV. Any municipality aggrieved by the decision of the secretary of state, the attorney general, or the commissioner of the department of revenue administration under RSA 49-B:4-a may seek review by way of appeal in superior court to determine the lawfulness of the decision. The clerk shall schedule a hearing on any such appeal within 10 days of the filing of such petition.

Source. 1979, 241:1. 1988, 223:10, eff. June 29, 1988. 2014, 292:4, eff. Sept. 30, 2014.

Section 49-B:11

49-B:11 Repealed by 1988, 223:14, eff. June 29, 1988. –

Section 49-B:12

49-B:12 Return to Former Form of Government. –

- I. Notwithstanding the provisions of this chapter, any town, through the petition procedure in RSA 49-B, may repeal its charter and return to its former form of government without establishing a charter commission.
- II. The question of whether the town should repeal its charter and return to its former form of government shall be put to the voters in the same manner as an amendment to a charter, under RSA 49-B:5.

Source. 1991, 304:10, eff. Aug. 23, 1991.

Section 49-B:13

49-B:13 Separability; Preservation. –

- I. The provisions of this chapter and of charters created under this chapter are separable. If any portion of this chapter, or of any charter adopted under the provisions of this chapter, or if the application of the chapter or such charter to any person or circumstance shall be invalid, the remainder of the chapter or such charter or the application of such invalid portions to other persons or circumstances shall not be affected by such invalidation.

II. All town and city charters which have been adopted, revised, or amended; all charter commissions which have been properly established and elected; all elections properly held; and actions properly taken pursuant to such charters are hereby legalized, provided that such charters at the time of their adoption were not contrary to the general laws and constitution of the state.

II-a. Notwithstanding RSA 49-B:1, all town or city charters which have been adopted, revised, or amended before July 5, 2011 to include a tax or spending cap of any kind and all charter commissions which have been properly established and elected; all elections properly held; and all actions properly taken related to the tax or spending cap in such charters are hereby endorsed, ratified, validated, and legalized and are fully enforceable.

III. RSA 32 shall not apply to a municipality adopting, revising, or amending a charter under RSA 49-C or RSA 49-D unless that municipality adopts a budgetary town meeting, official ballot town meeting, an official ballot town council, or representative town meeting pursuant to RSA 49-D:3, I-a, II, II-a and III. Except that a municipality may adopt a tax cap as provided in RSA 49-C:33, I(d) or RSA 49-D:3, I(e), notwithstanding the provisions of RSA 32:5-b and RSA 32:5-c.

Source. 1991, 304:10. 1993, 332:4. 2008, 243:2. 2011, 234:7, eff. July 5, 2011. 2021, 88:1, eff. Aug. 20, 2021.

Concord School District Charter Commission

Section 49-B:14

49-B:14 Repealed by 2010, 213:2, II, eff. Nov. 8, 2011. –

Manchester School District Charter Commission

Section 49-B:15

49-B:15 Manchester School District; Charter Commission Established. –

I. A charter commission shall be established to develop a local procedure, which does not require the approval of the legislature, to revise, amend, or replace the Manchester school district charter, established in 1846 as amended in 1848, as amended by chapter 301 of the 1909 Laws of New Hampshire, as amended by chapter 323 of the 1909 Laws of New Hampshire, as amended by chapter 249 of the 1915 Laws of New Hampshire, as amended by chapter 302 of the 1915 Laws of New Hampshire, as amended by chapter 52 of the 1972 Laws of New Hampshire. The charter commission shall submit its recommendations for a procedure to revise, amend, or replace the Manchester school district charter in the form of a ballot question to the Manchester school district voters for a vote at the November 2020 regular election. If the ballot question is approved then the Manchester school district charter shall be revised, amended, or replaced in accordance with the local procedure approved by the school district voters and, effective on the date the ballot question is approved, the Manchester school district shall be solely responsible for revising, amending, or replacing the charter.

II. (a) The charter commission shall consist of 9 members who shall be registered voters of the Manchester school district, and who shall run without party designation.

(b) The election of charter commission members shall be held in conjunction with the regular November elections in 2019 in accordance with RSA 49-B:4.

III. The charter commission shall have all the powers and duties of a charter commission established pursuant to this chapter and shall comply with the provisions of this chapter, except as otherwise indicated in this section.

Source. 2019, 174:1, eff. July 10, 2019.