

Part 6- Bill Information- Home Rule Petitions

A. Effective Date

The effective date of a bill depends upon whether it is subject to the Referendum under Article 48 of the Constitution (local bills that are restricted in their operation to a particular town, city or other political division or to particular districts or localities of the commonwealth) and is normally effective 30 days after it becomes law. In order to make a local bill effective immediately a drafter should put, as the last section of the bill, the following language.

“SECTION X. This act shall take effect upon its passage.”

The effect of this section would be to make the bill effective the same day it becomes law.

B. Home Rule Petitions

1. Local Approval Requirements.

Section 8 of the Home Rule Amendment (Mass. Const. amend. art. 2, as appearing in amend. art. 89) requires special procedures, either prior local government approval or a two-thirds vote by each house following the Governor's recommendation -- when the Legislature acts "in relation to" a single city or town.

The Supreme Judicial Court has held that this restriction on legislative power "is to be narrowly construed" and in two cases emphasized that it does not prevent legislation on state, regional or general matters. *Clean Harbors of Braintree, Inc. v. Board of Health*, 415 Mass. 876, 881 (1993); *Gordon v. Sheriff of Suffolk County*, 411 Mass. 238, 244 (1991).

In *Gordon*, the court upheld provisions of the FY 1992 main budget transferring the new Suffolk County House of Correction from the Boston penal institutions department to the Suffolk County sheriff. Recognizing that "[o]peration of county correctional facilities has always been a matter of State and general concern," 411 Mass. at 246, the court concluded that the legislation's "special effect on Boston's penal institution's department . . . neither diminishes its broader purpose nor serves to make the Home Rule Amendment applicable." *Id.* at 245.

In the *Clean Harbors* case, the court upheld a law exempting pre-existing facilities from a statute requiring local boards of health to approve sites for certain hazardous waste facilities. Even though site proceedings were pending before the Braintree Board of Health and the court assumed that the new exemption applied in fact only to this single facility, there was no violation of section 8 because "the waste treatment performed at [this] facility is certainly a matter of State, regional and general concern." 415 Mass. at 882.

On the other hand, the court invalidated an appropriation item that sought to condition distribution of funds to Boston, but no other municipality, on the city's maintaining a certain

level of police and fire services. *Mayor of Boston v. Treasurer and Receiver General*, 384 Mass. 718 (1981).

2. How Often Must Local Approval Be Obtained?

The general policy of the Senate is that whenever a new petition for local legislation is filed in a new 2-year session of the General Court, it must be based upon a new local approval – not the old local approval used to file a bill in a previous session of the General Court; however the Senate allows a petition that is accompanied by a local approval dated within 1 year of the start of a new General Court as long as that local approval was not part of a bill that reached the floor (i.e. 2nd reading or further) in either branch during the previous session of the General Court.

A petition accompanied by a local approval voted on during a 2 year session is valid throughout the entire session.

3. Proper Local Approval.

Section 8(1) of the Home Rule Amendment provides that the Legislature may enact special laws relating only to a single city or town "on petition filed or approved by the voters of a city or town, or the mayor and city council, or other legislative body, of a city, or the town meeting of a town."

Direct voter approval is allowed if the city or town charter provides for the local initiative (or for a referendum to review approval by the local legislative body). *E.g.*, G.L. c. 43, §§ 37-44 (procedures in "plan" cities). *Opinion of the Justices*, 370 Mass. 879 (1976); *Marino v. Town Council*, 7 Mass. App. Ct. 461 (1979).

Otherwise, the local approval must be by vote of the city or town council (with the mayor's approval if the charter requires it for other municipal legislation) or town meeting. In two advisory opinions to the Legislature, the Justices of the Supreme Judicial Court have interpreted section 8(1) to require approval by "the responsible legislative body of the municipality." *Opinion of the Justices*, 375 Mass. 843, 845 (1978); *Opinion of the Justices*, 365 Mass. 655, 658 (1974). In both cases, the Justices consulted the municipality's charter to ascertain the procedures required for other local legislation, and advised that section 8 required those same procedures to be followed for approving home rule petitions: "§8 evinces no intention to prescribe different legislative procedures for a [home rule petition] from the procedures otherwise followed by the [municipal] legislative body." 365 Mass. at 659-60 (bill allowing town manager or administrator in "town council" municipalities to veto home rule petitions violated §8, because this official "has no such power in any other legislative context" under the charter). *See* 375 Mass. at 845-46 (Cambridge's "Plan E" Mayor had no power to veto home rule petition, because Plan E charter gives him "no legislative powers apart from those powers he possesses as a member of the city council," including no veto power). *But see Opinion of the Justices*, 429 Mass. 1201 (1999) (city council cannot override mayor's veto of home rule petition).

Before it can pass a special law based on a home rule petition, the Legislature must have evidence of approval by the municipal legislative body. This should take the form of a copy of the body's vote (or a certificate of the voters' vote on an initiative measure), including the date, attested by the original signature of the city or town clerk. The vote must request some action by the Legislature or "General Court."

4. Amending Home Rule Petitions.

Courts applying section 8(1) of the Home Rule Amendment have held that the municipal vote approving a home rule petition may be general or specific. *Newell v. Rent Board of Peabody*, 378 Mass. 443, 446-48 (1979); *Opinion of the Justices*, 356 Mass. 775, 791 (1969); *Nugent v. Town of Wellesley*, 9 Mass. App. Ct. 202 (1980). If the local approval is general (as it was in all three of these cases) -- or if the municipal vote does not restrict amendments -- the Legislature has considerable freedom to amend "within the scope of the general public objectives of the petition." *Opinion of the Justices*, 356 Mass. 775, 791 (1969). If the municipality wishes to restrict or preclude legislative amendments to its proposal, the municipal vote must say so in unambiguous terms.

A municipality has essentially three options when it approves a home rule petition:

(a) General vote. The municipal legislative body may approve a vote requesting legislation to accomplish a general purpose. Draft legislation may be attached, but the mere approval of proposed legislation by the municipal legislative body does not restrict legislative amendments. (See Special Commission on Implementation of the Home Rule Amendment, Second Report, Senate No. 10, at 11 [1967].) For example, if the vote sets forth the text of the proposed legislation and requests that the Legislature "enact the following," this is a general vote because it does not specifically preclude legislative amendments. If a draft bill is not approved, the legislation may be drafted by the municipal executive (the mayor, manager or selectmen), the state legislator who files it, or their respective counsel. One town uses the following form for such a general vote:

Voted, to authorize the Selectmen to petition the Legislature to enact legislation to [insert purpose]; provided, that the Legislature may reasonably vary the form and substance of the requested legislation within the scope of the general public objectives of this petition.

(b) Vote restricting amendments. The municipal vote may preclude substantive legislative amendments by clearly saying so. The City of Boston and some other municipalities routinely use this form:

Ordered: That a petition to the General Court, accompanied by a bill for a special law relating to the [city or town of] to be filed with an attested copy of this order be, and hereby is, approved under Clause (1) of Section 8 of Article 2, as amended, of the Amendments to the Constitution of the Commonwealth of Massachusetts, to the end that legislation be adopted precisely as follows, except for clerical or editorial changes of form only:- [insert text of bill].

The risk of using such language, especially for a town meeting that meets infrequently, is that an amendment necessary to secure passage of the bill may not be approved for many months.

Municipalities should not use the phrase “in substantially the following form” or “substantially as follows,” since the meaning of “substantially” is ambiguous. This phrase may mean that no amendments of “substance” are allowed, or that no “important” amendments are allowed. If the municipality desires the first meaning, it should use the Boston language.

(c) Vote allowing the municipal executive to approve amendments. A third option is to use the restrictive language of option (b), but also to include language allowing the municipal executive (especially the selectmen in towns) to approve amendments within the scope of the general public objectives of the petition. Municipalities should use the following form:

Voted, to petition the General Court to the end that legislation be adopted precisely as follows. The General Court may make clerical or editorial changes of form only to the bill, unless the Selectmen [or other municipal executive] approve amendments to the bill before enactment by the General Court. The Selectmen [or other municipal executive] are hereby authorized to approve amendments which shall be within the scope of the general public objectives of this petition. [insert text of bill]

C. Special Enactment Requirements

Article 89 of the Amendments to the Constitution, The Home Rule Amendment, requires a two-thirds vote of the House and Senate to enact a bill recommended by the Governor that relates to a single city or town but has not received local approval (section B of Part 6).	<p>ARTICLE LXXXIX OF THE AMENDMENTS TO THE CONSTITUTION REQUIRES</p> <p>TWO-THIRDS VOTE ON ENACTMENT</p> <p><i>Senate/House.....Committee on BTR</i></p> <p><i>Correctly Drawn</i></p> <hr/> <p><i>For the Senate Committee</i></p>
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<p>Article 115 of the Amendments to the Constitution requires a two-thirds vote of the House and Senate to enact a bill that imposes additional cost on cities or towns by regulating municipal employment (if each city or town does not have to accept it and the Legislature does not assume, or appropriate, the cost).</p>	<p>ARTICLE CXV APPLICABLE</p> <p>Two-thirds Vote Required</p> <p>Senate/House.....Committee on BTR</p> <p>Correctly Drawn.</p> <p>Provides for additional cost on two or more municipalities for the compensation, hours, status, conditions or benefits of municipal employment and comes within the provisions of Article CXV of the Amendments to the Constitution.</p> <hr/> <p>For the Senate/House Committee</p>
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D. Local Mandates

1. The “local mandates” Statute.

The voters originally enacted the local mandates statute, G.L. c. 29, § 27C, as part of the 1980 initiative law called “Proposition 2½.” It says that laws (including state agency regulations) “imposing any direct service or cost obligation upon any city or town” are not effective unless either the municipal legislative body votes to accept the law, or the Legislature appropriates the cost every year.

The local mandates law does not apply to:

- pre-1981 laws.
- “incidental local administration expenses.” These are “relatively minor expenses related to the management of municipal services . . . that . . . are subordinate consequences of a municipality's fulfillment of primary obligations.” *City of Worcester v. The Governor*, 416 Mass. 751, 758 (1994).
- laws that the Legislature specifically exempts (e.g., the Education Reform Act of 1993, *see* G.L. c. 70, § 15; St. 1993, c. 71, § 67).