

Authorizing A Home Rule Petition

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With Annual Town Meeting season nearly upon us and a busy budget season for mayors and municipal councilors, many municipalities will undoubtedly be presented with warrant articles or measures seeking to petition the Massachusetts General Court under the Home Rule Act for special legislation affecting their community. These special acts may be proposed by municipal entities, or, in some cases, pursuant to petitions initiated by voters. The level of specificity required for such petitions and the degree to which the State Legislature could become involved in altering proposed legislation can vary significantly, and care in drafting is important in order to obtain the special act the municipality seeks.

Local Approval Required: In order to request a special act affecting a single city or town, the first step is to gain local approval. Section 8(1) of the Home Rule Amendment requires a “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.” A municipality must also verify whether any other approval process is established by charter or previous special act, including applicable quantum of vote requirements. Note that under the Home Rule Amendment in cities, the petition must be filed with the approval of the mayor, and therefore, local veto override procedures are not available in this context.

Form of Proposed Legislation: While many votes approving the filing of special legislation will set forth the specific language for a special act, neither the Constitution nor state law require that the local legislative body approve, or attach to its vote, a draft bill. If the vote of the legislative body does not include particular language for a bill, such legislation may be drafted by the entity specified in the vote, or by the mayor, city or town manager, town administrator or select board, the state legislator who files the bill, or by any of their respective counsel.

Form of Local Approval: The legislative body has several options with respect to the form in which it approves the filing of special legislation.

Unrestricted: The first option is to take a general vote allowing the General Court to adopt legislative amendments within the scope of the general public objectives of the petition, and without the permission of the municipality. Thus, if a municipality so chooses, it can leave the final form of the bill to the complete discretion of the General Court. One of the benefits of this approach is that the General Court can correct any issues that it identifies. One of the detriments to this approach can be that the General Court may enact the bill with significant changes from what was voted.

Example: Moved that the [City Council/Town] vote to authorize the [Mayor/Board of Selectmen] to petition the General Court for a special act in the providing that [summary of act], and authorize the General Court to make any revisions that are necessary or appropriate to the form of such bill.

Restrictive: The other option is to take a restrictive vote precluding any amendment by the Legislature. While ensuring that the proposed legislation would be in the exact form specified by the municipality, this approach can also be problematic. Since the restrictive vote poses the risk that the Legislature will not pass the special legislation due to an objection to one or more portions of the draft legislation, the lack of flexibility may limit the ability of the General Court and the municipality to agree on even small corrections.

Example: Moved that the [City Council/Town] vote to authorize the [Mayor/Board of Selectmen] to petition the General Court for a special act in the exact form set forth below.

Hybrid: Due to the limitations of the above forms of local approval addressed above, a third, hybrid option, has been used consistently over the past two decades at the joint recommendation of House and Senate Counsel. For the hybrid approach, the legislative body approves the particular language of the proposed special legislation, and also appends language allowing the executive branch to approve amendments to the proposed special act within the scope of the public purpose of the petition, and authorizing the General Court to make such changes.

Example: Moved that the [City Council/Town] vote to authorize the [Mayor/Board of Selectmen] to petition the General Court for a special act in the form set forth below [OR on a document entitled, “ _____ ”], providing that [insert concise summary of act]; provided, however, that the General Court may make clerical or editorial changes of form only to the bill, unless the [Mayor/Board of Selectmen] approve amendments to the bill before enactment by the General Court; and provided further that the [Mayor/Board of Selectmen] is hereby authorized to approve amendments which shall be within the scope of the general public objectives of this petition;

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

[INSERT full text of proposed special act].

Voter Acceptance: There is nothing in the Home Rule Amendment to the Constitution or in the General Laws that requires that a municipality “accept” the provisions of a particular special act at an election. Thus, as a policy matter, the municipality may wish to consider whether there is value in presenting the proposed legislation to the voters of the municipality at an election, or whether there is some other goal that takes priority. For example, if the matter involves something particularly controversial, the drafters of the special act may want to include a voter acceptance provision. If the matter is relatively routine, or ratifying prior action taken, there may be no need for, or interest in, seeking any additional local approval. Note that the General Court will sometimes act more quickly, in our experience, if a controversial matter includes a so-called “voter acceptance” provision, as the

General Court is, essentially, only agreeing that the question of whether to adopt such a special act should be presented to the voters at an election.

Submission to the General Court: Once approved at the local level, a certified copy of the vote authorizing the filing of the same, and the proposed special legislation, if any, should be forwarded to the municipality's local legislative delegation with a request that the same be filed on its behalf. Typically, a short explanation of the reasons for the bill would accompany the same, including, perhaps, minutes of meetings at which the matter was discussed, local news coverage of the matter, etc. Of course, the trajectory of such a bill is dependent on many factors, including the complexity of the bill, whether there is any urgency with respect to the proposed legislation, whether similar actions have been taken by other municipalities, whether the subject matter is regulated by a particular statutory scheme, and, of course, politics. There is no guaranteed time frame for approval, however, and a municipality is well-served by contacting its local legislative delegation well in advance of local action on the proposed special legislation to let them know that the Home Rule Petition may be forthcoming, to explain why such legislation is needed, and to discuss potential approval timelines.

Summary: Special acts can cover a broad spectrum of subjects and allow cities and towns to address problems and issues unique to their particular community. Home Rule petitions, therefore, are an important mechanism providing flexibility to local governments. The drafters of such legislation, whether or not a municipality, should consider the necessity for such an act, the timing for approval of such act at the local level, and whether the matter should be submitted for acceptance to the voters of the municipality at an election.

Please contact Attorney Lauren F. Goldberg (lgoldberg@k-plaw.com), Brian W. Riley (briley@k-plaw.com) or any other attorney at the firm at 617-556-0007, with any questions concerning Home Rule Petitions.

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