

FINAL REPORT – CUMBERLAND COUNTY CHARTER COMMISSION

Honorable Commissioners of Cumberland County:

The Chairman of the Charter Commission here submits his Final Report, which is required by statute and, in this instance, serves as a narrative and rationale of the work the Commission completed in August 2010, which you, in turn, will present to the voters as a referendum question in November. I sincerely hope this report provides you an insight into our decision-making process and some context and history behind the provisions of this Charter.

Before I begin my requisite narrative, I offer first a word of caution: The Charter as presented to you on August 9, 2010 is the *complete* and *definitive* document of government. The statute that authorizes the creation of a Charter, MRS Title 30-A, Chapter 11, contemplates the content of this Final Report—but, alas, does little to define its form. The Charter Commission wishes to provide as much information as possible to the public. We *firmly* believe that this Final Report is *not* to be used as the foundation for legal arguments or challenges to the Charter, its provisions, or the process of creating the Charter. Rather, we offer this report as an extension of the already-ample public record of our political process and journey. Naturally, we encourage the public to examine each step of our process, each successive draft of the Charter, each vote required to move our process forward and deliver this final version.

Upon information and belief, the Charter Commission acted in accordance with, and in the spirit of, the relevant statutes that regulate the Charter process and created and maintained its records in compliance with all relevant Maine statutes.

The Commission drafted the Charter to represent the interests of the residents of Cumberland County, for this generation and for generations to come. The Commission imbued the Charter with a flexibility that allows future generations the mechanism to amend its provisions in response to new and unforeseen challenges.

As you know the voters of Cumberland County currently have no such right or privilege to alter or amend County government. The State Legislature, alone, mandates our current form government and will so in the future—that is, until the voters of Cumberland County assume “home rule,” which is discussed in greater detail below.

How then do we begin to create a government that addresses the specific challenges of our region? We begin with a time-honored description of the physical boundaries and jurisdiction of Cumberland County.

PREAMBLE & AUTHORITY

The Charter Commission follows the customary practice and formula of establishing the County as a corporate and legal entity—and defines its relationship with respect to other corporate and legal entities. Thus, we begin by recognizing in our PREAMBLE the traditional geographical boundaries

of the County and the limits and scope of its legal responsibilities relative to State and Federal government. The Maine Legislature determines the geographic boundaries of Cumberland County. And Courts of Law will determine the appropriate reach of its legal powers over time and through jurisprudence. Members of the Charter Commission believe that any AUTHORITY we define in this Charter is consistent with similar authorities of similar counties and serves the specific interests of the residents of this County. We also recognize that the duties and responsibilities of governments change over time to meet new challenges. Therefore, this Commission underscores—whenever and wherever appropriate—the importance of the County’s ability to expand and contract with the changes in other agencies. Members of the Commission feel strongly that a Charter must first firmly secure the interests and intent of the electorate and must protect its content from misinterpretation and legal challenges, in this instance, for generations to come. To that end, we use here language that will illustrate to future fact-finders that Cumberland County is prepared to govern itself to the degree that changes in State and Federal law create new needs for new services. Hence, the many references and comparisons “to the full extent permissible under the Constitution and laws of the State of Maine and the United States of America.” Our intent here is to make clear that, if, for instance, a presiding form of government fails to enforce the law or administer its responsibilities at a higher or lower level of government service, then the County may exercise its right under “home rule” to fill any such void and render much-needed continuity and the equivalent of those vacated services.

POWERS AND DUTIES

2.1

The Charter Commission specifically employs the term “home rule” in this General Grant of Power for several reasons. Home rule describes a general promotion of more local control and self determination. The term is applied widely to define the outcome of a Charter process that seeks to improve the operation of its local government through its own POWERS and DUTIES. The Commission makes special note that, without the implied self-determining powers of “home rule,” Cumberland County will remain forever ineligible for many forms of federal funding and other local opportunities. This also explains our insertion of language addressing “options available to private enterprise.” A “home rule” Charter confers specific powers to this corporation in order that it may now apply directly for the federal funds that the County must now currently apply for through the State. Again, members of the Commission feel strongly that we must firmly secure the interests of the electorate against misinterpretation and legal challenges that seek to limit the POWERS and DUTIES of County government and, so, we insert here that “these powers are to be interpreted broadly.”

2.2

The Charter Commission envisions a County government that is both an advocate and a resource for municipal government. Members of the Commission are also keenly aware that private and non-profit groups work cooperatively with local governments to provide valuable and much-needed services and these relationships often escape any definition of geography, at times forming “special districts.” The language prescribed in the Transfer of Powers contemplates the County assisting in the continuity of services, regardless of the geographic restrictions or corporate entity

of the service provider or providers, leaving the level of assistance provided by the County to these service providers at the “sole discretion” of the Board of Commissioners.

2.3

Similarly, the Charter Commission recognizes that some services may be best provided by corporate or private entities—and *not* County government—and so grants the Board of Commissioners the power to contract those services to organizations that are best able to provide them.

2.4

This section defines the responsibilities of the Board of Commissioners [2.4.1], which must oversee the direction and policy of County government, as well as the County Manager [2.4.2], who must administer and enforce those policies. The Charter Commission envisions a corporate model of management and favors centralizing administrative power in the County Manager’s office. Charter Commissioners seek to limit inefficiency and waste in the administration of County government by investing in the County Manager the ultimate responsibility of administering the Board’s policies and directives and of resolving by his or her authority any conflict that may arise in the administration of the entire enterprise of County government. The Board provides best practices and specific policies through the creation and maintenance of Bylaws.

2.5

The Charter Commission here clarifies any ambiguity of our intent in the Construction of Services as we attempt to construct a rationale behind the creation of the Charter, namely, to confer as much “home rule” authority as possible upon County government in order that it address the specific needs of the region. We recommend avoiding the creation of “special districts” because historically this has proven to be a burdensome solution to regional problems. Currently, the State legislature is the only entity that can create a separate corporate entity—or “special district”—within Cumberland County. So the Charter Commission hereby authorizes the County to create cooperatives and other efficient forms of contractual organizations in place of “special districts” whenever possible.

2.6

Similarly, the Charter Commission seeks to empower County government with tools and practices to procure services from the agencies or entities that best address the specific needs of residents—as efficiently as possible. We, therefore, authorize—and encourage—County administration to look at as many factors as possible when determining who will provide those services, including an acknowledgment that obtaining services from local vendors may be in the best interest of the County for reasons of geographical convenience or even the preservation and maintenance of capital and valuable services within the local economy.

BOARD OF COUNTY COMMISSIONERS

3.1

The Charter Commission deliberated at length before arriving at a majority vote that would affix the number of districts in Cumberland County to five [3.1.1]. On the one hand, members recognize that voters recently rejected an increase in the number of districts from three to seven. On the other hand, the full Commission acknowledges the benefits of greater representation. We did not look far for examples. Consider, two County commissioners currently make a simple majority; and so each year two Commissioners—that same simple majority—alone decide the size and scope of the County’s entire annual budget. Consider also, three Commissioners alone represent more than one-quarter of a million constituents, roughly more than 91,000 constituents each. A State Senator is currently responsible for representing approximately 36,000 constituents. Charter Commissioners unanimously believe that *any* reapportionment of districts to a number greater than three will align representation at the County level with practices and standards of representation used at the State level. Members further believe that the reapportionment will breathe new life into the electoral politics of regions that are currently mismatched demographically and geographically, such as Harrison and Harpswell, for instance, which share one elected County Commissioner yet compete directly for the limited resources of the County in meeting very different regional demands. Charter Commissioners unanimously express their respect for the outcome of the referendum in 2007. But we also believe that a lack of context on the ballot question that year left voters searching for a rationale for change. By inserting the apportionment question in this Charter, Commissioners hope now to provide that valuable context: Increasing the number of districts provides better representation to thousands of residents in the County who are currently lumped into the electoral process with other residents competing for the same resources. The Commission offers here to reconvene on behalf of the voters and oversee the reapportionment process [3.1.2].

3.2

Charter Commissioners also spent considerable time and effort arriving at the term and service of the County Commissioners. Here again we seek to align the County with best practices and current standards of other counties in Maine and the nation.

3.3

Who is eligible to represent the residents of Cumberland County? Here, the Charter Commission need only look to current and customary practice: Commissioners must reside in the district they represent [3.3.1 and 3.3.2]. And they are restricted from performing certain duties and fulfilling certain other obligations and responsibilities [3.3.3.1] while they represent the residents of their districts and for a period of time after their service [3.3.3.2]. Charter Commissioners believe these provisions improve the performance and promote the execution of responsible representation. The Charter Commission contemplates and addresses here the importance of continuity of government [3.4, 3.5, and 3.6]: Unlawful representation will be addressed by the Board of Commissioners who must act in the best interest of the residents of Cumberland County.

3.7

Compensation of the Board is currently determined by the Board itself. Charter Commissioners believe that another authority should oversee the salary of Commissioners. Such authority will now be found in the budgetary responsibilities of the Finance Committee.

3.8

Here, the Charter Commission elaborates on the specific responsibilities of the Board [3.8.1] and the County Manager [3.8.1.1., 3.8.1.2, and 3.8.1.3]. Generally, the Commission believes that the County is best served by a corporate-style, “strong” executive. This form of management follows successful models of private enterprise and allows the Board to concentrate on creating wise policy, leaving the executive skills of the County Manager to harness the County’s resources to carry out that policy. As in the private sector, the Board is responsible for the corporate culture and fiscal health of the County, thereby requiring constant examination and proof of performance [3.8.2]. The Board is also authorized to create Standing [3.8.3.1] and Ad Hoc Committees [3.8.3.2] to assist in the examination of specific aspects of County government. The Board is required to operate under the authorizing language of the Charter [3.9.2] and must draft and periodically review its Rules and Bylaws [3.9.1, 3.9.1.1].

3.10

The Charter Commission believes that the residents of Cumberland County deserve the highest quality of open and transparent government. To that end, the Board must behave and function professionally: The Board must meet at least once each month [3.10.1]; and best practices of parliamentary procedure must be adhered to and maintained at all times [3.10.1.1, 3.10.1.2, 3.10.1.3, and 3.10.1.4].

3.11 & 3.12

The Charter Commission here continues to demand the highest caliber of professional government, requiring the bonding of certain employees and officers [3.11] and the maintenance of records for the public to examine [3.12].

ADMINISTRATION

4.2

The Charter Commission seeks here to create a form of government that is both consistent and flexible and, above all, responsive to the specific challenges of the region. To that end, we offer the voters a Charter that professionalizes as many offices as the State Legislature and the residents of Cumberland County allow. The elected Board of Commissioners hires the County Manager based on his or her executive experience. In turn, the County Manager hires and manages staff with the expertise to direct the day-to-day operations of county government [4.2.1 and 4.2.2]. The County Manager is also responsible for the conduct of staff and the corporate culture of the Administration [4.2.3].

4.3

In order to maintain the flexibility of a chartered County government, the County Manager must be able to identify and respond to changes in the needs and demands of the constituents of Cumberland County. The Charter Commission believes that residents are best served by a

government that can assemble and bring to bear services as needs arise. This Charter authorizes the Board and the County Manager to respond to those needs in a responsible manner that keeps government flexible and relevant. Naturally, there are other considerations that shape government. For example, the State Legislature continues to require the maintenance of certain elected offices and prohibits their elimination. This Charter allows the residents of Cumberland County to exercise good judgment and determine for themselves the relevance of elected and non-elected offices as State law allows.

FINANCE

5.1

As an elected body, the Board of Commissioners bears the ultimate responsibility for the financial health of the County. This Charter holds that body accountable for creating a responsible budget to serve the residents of Cumberland County.

5.2

The Board shall determine the beginning and end of a fiscal year in its Bylaws.

5.3

Charter Commissioners believe that the Board must raise only that revenue which is required to provide and maintain relevant services to the residents of Cumberland County. The Board is obliged to comply fully with Maine statutes to levy those revenues.

5.4

The Charter Commission is comprised of many former elected-municipal officials who served with distinction on the County's Finance Committee and so are familiar with the current process of managing the annual budget. Charter Commissioners believe that the residents of Cumberland County are best served by a Finance Committee with the authority to demand greater representation in the annual budgetary process. Therefore, we create here the provisions that allow the Committee greater oversight and leverage in that process. And since the Finance Committee is appointed through caucus by elected municipal officials [5.4.1], it stands to reason that the residents themselves ultimately exercise a greater electoral influence on the budget process [5.4.2].

5.5

The Charter Commission here outlines the schedule and the deadlines required to present and adopt a fiscally responsible budget.

5.6

The Charter Commission here outlines the definitions and deadlines required to present and adopt a fiscally responsible budget. Provisions outlined here demand of Commissioners and the Finance

Committee the highest standards of performance and transparency of process, including an open, public exchange of motivations and justifications between the Board of Commissioners and the Finance Committee throughout the development of the budget [5.6.5], and these provisions articulate the consequence of failing to develop that budget responsibly [5.6.6].

5.7

The Charter Commission is well aware that unforeseen circumstances alter even the best laid plans. The Board of Commissioners and the Finance Committee *together* are responsible for adjusting the budget in volatile years.

5.8

Reputable bond houses value the fiscal restraint of Cumberland County and this is reflected proportionately in its premium rate to borrow. Charter Commissioners discussed many successful formulas and approaches to maintain the highest bond rating with the County's bond agent and bond counsel, and we believe these successful formulas are reflected in these provisions.

5.9

The Charter Commission recognizes that the County Manager and Board of Commissioners must transfer balances that remain at the end of each fiscal year and apply them elsewhere to prepare budgets the following year. This provision authorizes such transfers, so far as they follow best practices and maintain the highest standards of Generally Accepted Accounting Principles or a similar, recognized accounting standard generally applied by municipal or regional government.

ELECTIONS

The State Legislature and the Secretary of State mandate the mechanism and conduct of elections in Maine. The Charter Commission recognizes the authority of these agencies to provide guidance and instruction for holding elections in Cumberland County [6.1, 6.2, 6.3, and 6.4].

GENERAL PROVISIONS

The Commission drafted this Charter and its provisions to offer residents of Cumberland County the greatest amount of flexibility to alter regional government in response to new challenges. This Charter affords both large and small changes through an electoral process of amendment [7.2]. Residents of the County are currently barred from such alterations. Adopting this Charter opens the door to the direct management of government by residents of Cumberland County, a process which is currently out of reach of the voters in our region and which is wholly governed by the State Legislature. To ensure a direct management of regional government, Charter Commissioners include a provision that requires direct supervision of government by the residents and Board of Commissioners.

TRANSITION PROVISIONS

The Charter Commission recognizes that contracts and agreements must be honored while the County responds to the many provisions of this Charter. The final provisions of this Charter ensure the continuity of relevant pledges, provisions, and contracts until those pledges are null and void and the Charter supersedes them.

NOTE: The Charter Commission expresses concern that the language currently prescribed for any referendum question to adopt a Charter in Cumberland County may directly, or indirectly, confuse the voter. We, therefore, respectfully request that the Board of Commissioners petition the Secretary of State, in so far as State and Federal law permit, to modify that language to more clearly reflect that a referendum in November 2010 will be Cumberland County's first and *only* Charter.

FINAL NOTE: The Charter Commission owes Commissioners Steven Gorden and David Lunt a large debt of gratitude for their authorship of the Charter. We asked them to capture our discussions. They responded with a flawless text—without complaint.

The Chairman of the Cumberland County Charter Commission alone is the author of this Final Report. I respectfully submit it for your consideration.

Claude VZ Morgan, Chairman Cumberland County Charter Commission