

HOUSE No. 4881

The Commonwealth of Massachusetts

In the Year Two Thousand Ten

An Act authorizing governmental bodies to enter into contracts for the inspection, maintenance, repair or modification of water storage facilities..

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

1 The Committee on Ways and Means recommends that the bill be amended by striking out
2 all after the enacting clause and inserting in place thereof the following:

3 Chapter 40 of the General Laws is hereby amended by adding the following 9 sections:-

4 Section 61. As used in sections 62 to 69, inclusive, the following words shall have the
5 following meanings unless the context clearly requires otherwise:

6 "Governmental body", a city, town, county, water district or wastewater district.

7 "Two-thirds vote", in a city, a two-thirds vote of the city council with the approval of the
8 mayor, in a town, a two-thirds vote of the board of selectmen, in a district, a two-thirds vote of
9 the commissioners.

10 "Water storage facility", an above or below-ground facility or tank, standpipe, water
11 tower or other building or structure used to store water for, without limitation, public drinking
12 water supply and fire protection.

13 Section 62. Pursuant to sections 63 to 69, inclusive, a governmental body may enter into
14 contracts for the inspection, maintenance, repair or modification of a water storage facility to
15 ensure adequate services and to ensure the ability of the water storage facility to comply with the
16 requirements of federal, state and local laws. Contracts shall be awarded in accordance with
17 chapter 30B, except for clause (3) of subsection (b) of section 6, clause (3) of subsection (e) of
18 said section 6, subsection (g) of said section 6 and sections 13 and 16 of said chapter 30B.

19 Section 63. (a) A contract awarded under section 62 may provide for a term, not
20 exceeding 20 years, and an option for renewal or extension of inspection, maintenance repair or
21 modification services for 1 additional term not exceeding 10 years that contains similar terms to
22 the original contract. When a contract is to contain an option for renewal or extension, the
23 solicitation shall include notice of that provision. A renewal or extension shall be at the sole
24 discretion of the governmental body under the terms and conditions of the original contract or on
25 such other terms and conditions more favorable to and acceptable to the governmental body.

26 (b) A contract entered into under section 62 may provide that the governmental body's
27 obligation under the contract for payment of the annual costs to inspect, maintain, repair, modify
28 or install a water storage facility shall be subject to appropriation, but a governmental body shall
29 not be exempt from liability for the payment of the amounts amortized for completed capital
30 modifications, repairs or installation of equipment and systems at a water storage facility. Costs
31 shall be amortized over a period that shall not be longer than the useful life of the modifications
32 or repairs or the equipment and systems installed. A governmental body's payment obligation
33 for any inspection, maintenance, repair or modification services shall be contingent upon the
34 contractor's performance of the services under the terms of the contract.

35 (c) A contract entered into under section 62 may provide for any activities deemed
36 necessary to carry out the purposes authorized in sections 62 to 69, inclusive, which may include,
37 but shall not be limited to, equipment installation and replacement, studies, permitting, design
38 and engineering work, construction work, ordinary repairs and maintenance and the furnishing of
39 all related material, supplies and services required for a water storage facility and the
40 management, construction, maintenance and repair of and improvements to the facility.

41 Section 64. (a) The chief procurement officer of a governmental body shall solicit
42 proposals through a request for proposals which shall include those items in clauses (1) and (2)
43 of subsection (b) of section 6 of chapter 30B and proposed key contractual terms and conditions
44 to be incorporated into the contract, some of which may be deemed mandatory or non-
45 negotiable; provided, however, that the request for proposals may request proposals or offer
46 options for fulfillment of other contractual terms and such other matters as may be determined by
47 the governmental body.

48 (b) Public notice of the request for proposals shall be published in the central register
49 pursuant to section 20A of chapter 9 at least 90 days before the time specified for receipt of
50 proposals in the request for proposals.

51 Section 65. The chief procurement officer of a governmental body shall award the
52 contract, subject to a two-thirds vote of the governmental body, to the most advantageous
53 proposal from a responsible and responsive offeror taking into consideration price and the
54 evaluation criteria set forth in the request for proposals, as defined in section 2 of chapter 30B.
55 The governmental body shall provide written notice to the selected offeror within the time for
56 acceptance specified in the request for proposals. The awarding of the contract shall be subject

57 to sections 62 to 69, inclusive. The governmental body and the offeror may extend the time for
58 acceptance by mutual agreement.

59 Section 66. A contract awarded under section 62, or a renewal thereof, shall be subject to
60 such terms and conditions as the governmental body shall determine to be in its best interest.

61 Section 67. The department of environmental protection may issue project approval
62 certificates with respect to capital project costs identified with a contract procured by a
63 governmental body under sections 62 to 69, inclusive, for facilities improvements. Section
64 68. No general or special law or rule or regulation relating to the advertising, bidding or
65 awarding of contracts, for the procurement of services or for the construction and design of
66 improvements shall apply to a selected offeror which is awarded a contract under sections 61 to
67 70, inclusive, except for sections 26 to 27F, inclusive, and section 29 of chapter 149.

68 Section 69. A contract made in violation of any provision of sections 62 to 68, inclusive,
69 shall be void and the governmental body shall make no payment under any such contract. Minor
70 informalities shall not render a contract void.