

**SENATE . . . . . No. 1444**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Nine**  
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An Act authorizing a governmental body to enter into contracts for the operation, maintenance, operation and maintenance, lease or sale and modification of water storage facilities , water treatment facilities and wastewater treatment facilities, collection and distribution systems, sewers and pump stations..

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

1           SECTION 1. For the purposes of this act, the term "governmental body" shall be defined  
2 as any city, town, county, water district, wastewater district, authority or state agency located  
3 within the commonwealth; provided further that the term “governmental body” shall not mean  
4 the Massachusetts Water Resources Authority (MWRA).

5           SECTION 2. Chapter 40 of the General Laws is hereby amended by  
6 adding the following twelve sections:

7           Section 60. Notwithstanding any general or special law to the contrary, any  
8 governmental body that accepts the provisions of this section and sections sixty-one through  
9 sixty-eight, inclusive, may in accordance with the provisions of this chapter,

10           enter into a contract for the lease or sale, operation, maintenance or operation and  
11 maintenance, financing, permitting, design and construction of modifications, and new facilities,  
12 and installation of new equipment and systems, or any combination thereof, necessary for water

13 storage facilities, water treatment facilities, wastewater treatment facilities, septage treatment  
14 facilities, sewer and pump stations, collection and distribution systems, to ensure adequate  
15 services and to ensure the ability of water storage facilities, water treatment facilities, septage  
16 treatment facilities, wastewater treatment facilities, sewers and pump stations, collection and  
17 distribution systems to operate in full compliance with all applicable requirements of federal,  
18 state and local law. Said contract shall be awarded pursuant to the provisions of chapter thirty B  
19 except for paragraph (3) of subsection (b), paragraph (3) of subsection (e), subsection (g) of  
20 section six and sections thirteen and sixteen.

21           The request for proposals for such contract shall specify the method for comparing  
22 proposals to determine the proposal offering the most advantageous proposal to a governmental  
23 body including, but not limited to, all capital financing, operating and maintenance costs,  
24 warranty requirements, indemnity and security, experience and technical competence. If a  
25 contract is awarded to an offeror who submitted the most advantageous proposal, but who did  
26 not offer the lowest overall cost, the governmental body shall explain the reason for the award in  
27 writing. The contract shall provide that all necessary construction of modifications, and new  
28 facilities, and installation of new equipment and systems, performed after the initial capital  
29 repairs, alterations or improvements that are awarded pursuant to this section, which are  
30 estimated to cost more than two hundred and fifty thousand dollars shall be awarded according  
31 to the provisions of chapter one hundred forty-nine, sections 44A, 44B, 44C, 44E ( but not  
32 including modular buildings), 44F, 44G and 44H, if the contractor employs a general contractor,  
33 or chapter one hundred forty-nine, sections 44B, 44C, 44E, 44F, 44G, and 44H, if the contractor  
34 acts as a construction manager and contracts with subcontractors to perform the construction  
35 work. The governmental body may, with advice from the contractor and the engineer employed

36 pursuant to section 67, pre-qualify general contractors and subcontractors who may submit bids  
37 and sub-bids for each such construction contract. The specifications for such work shall contain  
38 certification by the qualified water and wastewater engineer employed pursuant to this section  
39 that he has independently assessed the need for such capital improvements, renovation,  
40 modernization, installation or replacement work and that he has reviewed and approved the  
41 contractor's proposed plans and specifications prior to advertising for bids and sub-bids.

42           Section 61. (a) Notwithstanding the provisions of any general or special law to the  
43 contrary, a contract or contracts awarded pursuant to section sixty may provide for a term, not  
44 exceeding twenty years, and an option for renewal or extension of operation, maintenance or  
45 operation and maintenance services for one additional term not exceeding ten years in  
46 accordance with the terms of the original contract. A contract entered into pursuant to section  
47 sixty to seventy-one, inclusive, may provide that the governmental body shall not be exempt  
48 from liability for payment of the costs to operate, maintain, finance, permit, design and construct,  
49 modify or install new equipment and systems at any water storage facilities, water treatment  
50 facilities, wastewater treatment facilities, septage treatment facilities, collection and distribution  
51 facilities, sewers and pump stations necessary to ensure the ability of said facilities, to operate in  
52 full compliance with all applicable requirements of federal, state and local law, provided that  
53 such costs shall be amortized over a period that is no longer than the useful life of said  
54 modifications, equipment and systems. A governmental body's payment obligation for all  
55 operation, maintenance or operation and maintenance services shall be conditioned on the  
56 contractor's performance of said services in accordance with all contractual terms.

57           (b) Any contract entered into pursuant to sections sixty to seventy-one, inclusive,  
58 may provide for such activities deemed necessary to carry out the purposes authorized herein,

59 including, but not limited to, financing, facility or land sale or lease, equipment installation and  
60 replacement, performance testing and operation, studies, permitting, design and engineering  
61 work, construction work, ordinary repairs and maintenance, and the furnishing of all related  
62 material, supplies and services required for the water storage facilities, water treatment facilities  
63 and wastewater treatment facilities, septage treatment facilities, collection and distribution  
64 systems, sewer and pump stations and the management, construction, operation, maintenance  
65 and repair of and improvements to said facilities.

66           Section 62. The chief procurement officer of a governmental body shall solicit  
67 proposals through a request for proposals which shall include those items in paragraphs (1) and  
68 (2) of subsection (b) of section six of chapter thirty B and proposed key contractual terms and  
69 conditions to be incorporated into the contract, some of which may be deemed mandatory or  
70 non-negotiable; provided, however, that the request for proposals may request proposals or offer  
71 options for fulfillment of other contractual terms, and such other matters as may be determined  
72 by the governmental body.

73           Section 63. The chief procurement officer of a governmental body shall make a  
74 preliminary determination of the most advantageous proposal from a responsible and responsive  
75 offeror taking into consideration price, estimated life-cycle costs, allocation of risks and  
76 responsibilities and other evaluation criteria set forth in the request for proposal. The chief  
77 procurement officer may negotiate all terms of the contract not deemed mandatory or non-  
78 negotiable with such offeror. If, after negotiation with such offeror, the chief procurement officer  
79 determines that it is in the governmental body's best interests to terminate negotiations with said  
80 offeror, the chief procurement officer shall notify said offeror in writing that negotiations are  
81 terminated and shall enter into negotiations with the next most advantageous proposal from a

82 responsible and responsive offeror taking into consideration price, estimated life cycle costs,  
83 allocation of risks and responsibilities and other evaluation criteria set forth in the request for  
84 proposals, and may negotiate all terms of the contract not deemed mandatory or non-negotiable  
85 with such offeror. The chief procurement officer shall award the contract to the most  
86 advantageous proposal from a responsible and responsive offeror taking into consideration price,  
87 estimated life cycle costs, allocations of risks and responsibilities and other evaluation criteria set  
88 forth in the request for proposal and the terms of the negotiated contract. Subject to the approval  
89 of the governmental body, the chief procurement officer shall award the contract by written  
90 notice to the selected offeror within the time for acceptance specified in the request for  
91 proposals. Such award shall be subject to this section and sections sixty to sixty-two and sections  
92 sixty-four to seventy-one, inclusive. The parties may extend the time for acceptance by mutual  
93 agreement.

94           Section 64. Notwithstanding any other provisions of this act, it shall be a mandatory  
95 term of any request for proposal issued by a governmental body and of any contract entered into  
96 by a governmental body with any party for operations and maintenance that any party that has  
97 entered into a contract pursuant to the terms of this act with a governmental body, shall require,  
98 in order to maintain stable and productive labor relations and to avoid interruption of the  
99 operation of the facility and to preserve the health, safety and environmental conditions of  
100 residents

101           of a city or town and surrounding communities, any and all employees working on the  
102 operation and maintenance of the water storage and treatment facilities, wastewater treatment  
103 facilities, septage treatment facilities, collection and distribution facilities, sewers and pump  
104 stations that exist at the time of execution of the contract entered into pursuant to the provisions

105 of this act, be offered employment by any party entering into a contract with a governmental  
106 body for the operation and maintenance of said facilities, and furthermore, said party entering  
107 into a contract with a governmental body, shall adopt all terms and conditions of employment  
108 provided by the last applicable labor agreement negotiated between the labor organization  
109 representing said employees and the applicable employer who has most recently employed said  
110 employees prior to entering into any contract pursuant to this section, and sections sixty to sixty-  
111 three and sections sixty-five to seventy-one, inclusive. Moreover, said parties shall furthermore  
112 agree to meet its legal obligations with regard to any labor organization representing employees  
113 engaged in the operation and maintenance of the water treatment facilities, wastewater  
114 treatment facilities, septage treatment facilities, collection and distribution facilities, sewers and  
115 pump stations described herein. Notwithstanding any other provisions of sections sixty to  
116 seventy-one, inclusive, any proposal or contract for this purpose and not complying with the  
117 above terms, shall be disqualified from consideration. The provisions of this section shall not  
118 apply where one or more full-time public employees are not displaced from employment as a  
119 result of the contract entered into pursuant to Sections 60-71. The provisions of this section shall  
120 not apply to water storage facilities.

121 Section 65. Subject to the provisions of this section and section sixty to sixty-four and  
122 sections sixty-six to seventy-one inclusive, any contract awarded pursuant thereto shall be  
123 subject to such terms and conditions as the governmental city or town shall determine to be in  
124 the best interests of said governmental body. Any such contract shall provide that prior to the  
125 construction of modifications or installation of equipment and systems for water treatment  
126 facilities, wastewater treatment facilities, septage treatment facilities, collection and distribution  
127 facilities, sewers and pump stations the governmental body shall cause a qualified water and

128 wastewater engineer to independently review and approve plans and specifications for said  
129 modifications, equipment or systems.

130           Section 66. Notwithstanding the provisions of any general or special law or  
131 regulation to the contrary, the Department of Environmental Protection may issue project  
132 approval certificates with respect to the contract procured by a governmental body for water  
133 storage facilities, water treatment facilities, wastewater treatment facilities, septage treatment  
134 facilities, collection and distribution systems, sewers and pump stations. Any design and  
135 construction services included in such contract and any design and construction services  
136 procured in accordance with the provisions of this act shall not be precluded from eligibility for  
137 assistance under the Massachusetts Water Pollution Abatement Trust established by section two  
138 of the chapter twenty-nine C.

139           Section 67. The provisions of any general or special law or special act or regulation  
140 relating to the advertising, bidding or award of contracts, the procurement of services or to the  
141 construction and design of improvements, shall not be applicable to any selected offeror which is  
142 awarded a contract pursuant to sections sixty to seventy-one, inclusive, except as provided in this  
143 section, provided further, however, that the provisions of sections twenty-six to twenty-seven F,  
144 inclusive, and section twenty-nine of chapter one hundred forty-nine shall apply. Any such  
145 contract which requires the construction of any new capital improvements for any renovation,  
146 modernization, installation or replacement work estimated by an engineer experienced and  
147 qualified for the design and inspection of the construction of such work to cost more than two  
148 hundred and fifty thousand dollars shall require the contractor to prepare complete plans and  
149 specifications for the work, take bids from general contractors and subcontractors or to act as  
150 construction manager and take sub-bids from subcontractors and to award contracts and

151 subcontracts for the work as provided in section sixty. Any contract or contracts awarded  
152 pursuant to this section and sections sixty to sixty-six, and sixty-eight through seventy-one,  
153 inclusive, shall provide that in the event that the governmental body does not approve the  
154 contractor's proposed plans and specifications pursuant to this section, the governmental body or  
155 the contractor may terminate said contract under the terms and conditions of said contract. The  
156 provisions of this section shall not apply to water treatment facilities.

157           Section 68. An action, suit or proceeding contesting the validity or enforceability of  
158 a contract or contracts awarded pursuant to this act, or the compliance by the governmental body  
159 with the procedures relating to such award, shall be commenced within thirty days after  
160 publication of notice of such award by the chief procurement officer in a newspaper of general  
161 circulation according to the location of the government body.

162           Section 69. Notwithstanding the provisions of chapter thirty-two of the General  
163 Laws or any other general or special law to the contrary, any governmental body which adopts  
164 the provisions of this act shall provide for an early retirement incentive program as set forth for  
165 any employees working on the operation and maintenance of the watertreatment facilities,  
166 wastewater treatment facilities, septage treatment facilities, sewer and pump stations, collection  
167 and distribution systems, who (i) shall be an employee and an active member-in-service of the  
168 local retirement system established under said chapter thirty-two or any predecessor system on  
169 the date that the city or town enters into said contract, (ii) shall be eligible to receive a  
170 superannuation retirement allowance in accordance with the provisions of subdivision (1) of  
171 section five of said chapter thirty-two or subdivision (1) of section ten of said chapter thirty-two  
172 upon the effective retirement date specified in a written application to the local retirement board,  
173 and (iii) shall have filed a written application to retire for superannuation as of the date which



174 shall be specified in such application. The early retirement incentive program shall be  
175 administered by the local retirement board, which shall be authorized to promulgate regulations  
176 necessary to implement the provisions of said program. Notwithstanding the provisions of  
177 chapter thirty-two of the General Laws to the contrary, the normal yearly amount of the  
178 retirement allowance for an eligible employee who is employed by the city or town and who has  
179 paid the full amount of regular deductions on the total amount of regular compensation so  
180 determined under paragraph (a) of subdivision (2) of section five of said chapter thirty-two shall  
181 be based on the average annual rate of regular compensation as determined under said paragraph  
182 (a) and shall be computed according to the table contained in said paragraph (a) based on the age  
183 of such member and his number of years and full months of creditable service at the time of his  
184 retirement increased by up to five years of age or by up to five years of creditable service or by a  
185 combination of additional years of age and service, the sum of which shall not be greater than  
186 five. For the purpose of this act, words shall have the same meaning as in said chapter thirty-two  
187 of the General Laws unless otherwise expressly provided or unless the context clearly requires  
188 otherwise. An employee who retires and receives an additional benefit in accordance with the  
189 provisions of this act shall be deemed to be retired for superannuation under the provisions of  
190 said chapter thirty-two and shall be subject to any and all provisions of said chapter thirty-two.  
191 The total normal yearly amount of the retirement allowance, as determined in accordance with  
192 the provisions of section five of said chapter thirty-two of the General Laws, of any employee  
193 who retires and receives an additional benefit under the retirement incentive program in  
194 accordance with the provisions of this act shall not exceed such percentage of the average annual  
195 rate of his regular compensation received during any period of three consecutive years of  
196 creditable service for which the rate of compensation was the highest or of the average annual

197 rate for his regular compensation received during the periods, whether or not consecutive,  
198 constituting his last three years of creditable service preceding retirement, whichever is greater.  
199 The local retirement board shall prepare a funding schedule which shall reflect the costs and the  
200 actuarial liabilities attributable to the additional benefits payable under the retirement incentive  
201 program in accordance with the provisions of this act and such schedule shall be designed to  
202 reduce the additional pension liability attributable to such costs and liabilities to zero on or  
203 before June thirtieth, two thousand and seventeen; provided however, that said board shall  
204 triennially update such schedule until said June thirtieth, two thousand and seventeen. In each of  
205 the fiscal years until the actuarial liability determined under this section shall be reduced to zero,  
206 it shall be deemed an obligation of the county to fund such liability and there shall be  
207 appropriated in each such fiscal year the amount required by the funding schedule and the  
208 updates thereto. The provisions of this section shall not apply where one or more full-time  
209 public employees are not displaced from employment as a result of the contract entered into  
210 pursuant to Sections 60-71.

211 Section 70. It shall be a mandatory requirement that no less than ninety days prior to  
212 the commencement of any procurement process undertaken pursuant to the provisions of sections  
213 sixty-one to seventy-one for the design, construction, operation, maintenance or operation and  
214 maintenance, leasing, sale, or modification for work on the water treatment facilities,  
215 wastewater treatment facilities, septage treatment facilities, sewer and pump stations, collection  
216 and distribution systems, that the governmental body shall make public notification of said  
217 process by the following means:

218 1. Publish an appropriate notice to the Central Register, published by the Secretary of  
219 State.

220           2. Inform the collective bargaining agent representing employees of said facility (ies) or  
221 station(s) .

222           Section 71. Notwithstanding any general or special law to the contrary, any contract  
223 issued pursuant to this section or pursuant to a contract previously awarded under this section  
224 that provides for the construction, reconstruction, alteration or modification of water treatment  
225 facilities, wastewater treatment facilities, septage treatment facilities, collection and distribution  
226 systems, sewers and pump stations shall include, as a minimum, the following language:

227           (1) A private entity engaged in a construction, development, renovation, remodeling,  
228 reconstruction, rehabilitation or redevelopment project pursuant to a contract awarded under this  
229 act shall properly classify individuals employed on the project and shall comply with all laws  
230 relative to workers' compensation, unemployment insurance, social security taxes and income  
231 taxes with respect to those employees.

232           (2) All construction contractors or subcontractors engaged by any entity on any project  
233 which is performed pursuant to a contract awarded under this act shall have and maintain  
234 participation in a bona fide apprentice training program as defined by M.G.L. c.23, §11H and 11I  
235 for each category of work represented in their workforce that is approved by the Division of  
236 Apprentice Training of the Department of Labor and Workforce Development and abide by the  
237 apprentice to journeyman ratio for each trade.

238           (3) All construction contractors engaged by any entity on any project that is performed  
239 pursuant to a contract awarded under this act shall furnish, to the awarding authority,  
240 documentation showing all employees are employed on the project have hospitalization and

241 medical benefits that meet the minimum requirements of the Connector Board established by  
242 Chapter 58 of the Acts of 2006.

243           Section 72. Notwithstanding any general or special law to the contrary, sections sixty  
244 through seventy-one inclusive of this chapter may be accepted, in the case of a city with a Plan  
245 D or Plan E charter by the city council, with the approval of the mayor; in the case of a town  
246 with a town council, by the town council; in the case of all other towns, by the Board of  
247 Selectmen, in the case of an existing water and sewer commission, by its board of  
248 commissioners.

249           SECTION 3. This act will take effect upon passage.