

# SENATE NO. 1896

**AN ACT** AUTHORIZING A GOVERNMENTAL BODY TO ENTER INTO CONTRACTS FOR THE OPERATION AND MAINTENANCE, LEASE OR SALE AND MODIFICATION OF WATER STORAGE AND 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. AUTHORIZING A GOVERNMENTAL BODY TO ENTER INTO  
2 CONTRACTS FOR THE OPERATION AND MAINTENANCE, LEASE OR SALE AND  
3 MODIFICATION OF WATER STORAGE AND TREATMENT FACILITIES AND  
4 WASTEWATER TREATMENT FACILITIES, COLLECTION AND DISTRIBUTION  
5 SYSTEMS, SEWERS AND PUMP STATIONS.

6 For the purposes of this act, the term "governmental body" shall be defined as any city, town,  
7 county, water district, wastewater district, authority or state agency located within the  
8 commonwealth; provided further that the term "governmental body" shall not mean the  
9 Massachusetts Water Resources Authority (MWRA).

10 Section 2. Chapter 40 of the General Laws is hereby amended by adding the following

11 twelve sections:-

12 Section 60. Notwithstanding any general or special law to the contrary, any governmental  
13 body which accepts the provisions of this section and sections sixty-one through sixty-eight,  
14 inclusive, may in accordance with the provisions of this chapter,  
15 enter into a contract for the lease or sale, operation and maintenance, financing, permitting,  
16 design and construction of modifications, and new facilities, and installation of new equipment  
17 and systems, or any combination thereof, necessary at a water storage and treatment facilities,  
18 wastewater treatment facilities, septage treatment facilities, sewer and pump stations, collection  
19 and distribution systems, to ensure adequate services and to ensure the ability of water storage  
20 and treatment facilities, septage treatment facilities, wastewater treatment facilities, sewers and  
21 pump stations, collection and distribution systems to operate in full compliance with all  
22 applicable requirements of federal, state and local law. Said contract shall be awarded pursuant  
23 to the provisions of chapter thirty B except for paragraph (3) of subsection (b), paragraph (3) of  
24 subsection (e), subsection (g) of section six and sections thirteen and sixteen.

25 The request for proposals for such contract shall specify the method for comparing  
26 proposals to determine the proposal offering the most advantageous proposal to a governmental  
27 body including, but not limited to, all capital financing, operating and maintenance costs. If a  
28 contract is awarded to an offeror who submitted the most advantageous proposal, but who did  
29 not offer the lowest overall cost, the governmental body shall explain the reason for the award  
30 in writing. The contract shall provide that all necessary construction of modifications, and new  
31 facilities, and installation of new equipment and systems which are estimated to cost more than  
32 twenty-five thousand dollars shall be awarded according to the provisions of chapter one  
33 hundred forty-nine, sections 44A, 44B, 44C, 44E ( but not including modular buildings), 44F,

34 44G and 44H, if the contractor employs a general contractor, or chapter one hundred forty-nine,  
35 sections 44B, 44C, 44E, 44F, 44G, and 44H, if the contractor acts as a construction manager and  
36 contracts with subcontractors to perform the construction work. The governmental body may,  
37 with advice from the contractor and the engineer employed pursuant to section 67, prequalify  
38 general contractors and subcontractors who may submit bids and sub-bids for each such  
39 construction contract. The specifications for such work shall contain certification by the  
40 qualified water and wastewater engineer employed pursuant to this section that he has  
41 independently assessed the need for such capital improvements, renovation, modernization,  
42 installation or replacement work and that he has reviewed and approved the contractor's  
43 proposed plans and specifications prior to advertising for bids and sub-bids.

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

57 the contractor's performance of said services in accordance with all contractual terms.

58 (b) Any contract entered into pursuant to sections sixty to seventy-one, inclusive, may  
59 provide for such activities deemed necessary to carry out the purposes authorized herein,  
60 including, but not limited to, financing, facility or land sale or lease, equipment installation and  
61 replacement, performance testing and operation, studies, permitting, design and engineering  
62 work, construction work, ordinary repairs and maintenance, and the furnishing of all related  
63 material, supplies and services required for the water storage and treatment facilities and  
64 wastewater treatment facilities, septage treatment facilities, collection and distribution systems,  
65 sewer and pump stations and the management, construction, operation, maintenance and repair  
66 of and improvements to said facilities.

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

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

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

94 Section 64. Notwithstanding any other provisions of this act, it shall be a mandatory term of  
95 any request for proposal issued by a governmental body and of any contract entered into by a  
96 governmental body with any party regarding the subject matter of sections sixty to seventy-one,  
97 inclusive, that any party that has entered into a contract pursuant to the terms of this act with a  
98 governmental body, shall require, in order to maintain stable and productive labor relations and  
99 to avoid interruption of the operation of the facility and to preserve the health, safety and  
100 environmental conditions of residents  
101 of a city or town and surrounding communities, that 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 be offered employment by any party entering into a contract with a governmental body  
105 for the operation and maintenance of said facilities, and furthermore, said party entering into a  
106 contract with a governmental body, shall adopt all terms and conditions of employment  
107 provided by the last applicable labor agreement negotiated between the labor organization  
108 representing said employees and the applicable employer who has most recently employed said  
109 employees prior to entering into any contract pursuant to this section, and sections sixty to  
110 sixty-three and sections sixty-five to seventy-one, inclusive. Moreover, said parties shall  
111 furthermore agree to meet its legal obligations with regard to any labor organization  
112 representing employees engaged in the operation and maintenance of the water storage and  
113 treatment facilities, wastewater treatment facilities, septage treatment facilities, collection and  
114 distribution facilities, sewers and pump stations described herein. Notwithstanding any other  
115 provisions of sections sixty to seventy-one, inclusive, any proposal or contract for this purpose  
116 and not complying with the above terms, shall be disqualified from consideration.

117 Section 65. Subject to the provisions of this section and section sixty to sixty-four and  
118 sections sixty-six to seventy-one inclusive, any contract awarded pursuant thereto shall be  
119 subject to such terms and conditions as the governmental city or town shall determine to be in  
120 the best interests of said governmental body. Any such contract shall provide that prior to the  
121 construction of modifications or installation of equipment and systems the governmental body  
122 shall cause a qualified water and wastewater engineer to independently review and approve  
123 plans and specifications for said modifications, equipment or systems.

124 Section 66. Notwithstanding the provisions of any general or special law or regulation to  
125 the contrary, the department of environmental protection may issue project approval certificates

126 with respect to the contract procured by a governmental body for water storage and treatment  
127 facilities, wastewater treatment facilities, septage treatment facilities, collection and distribution  
128 systems, sewers and pump stations. Any design and construction services included in such  
129 contract and any design and construction services procured in accordance with the provisions  
130 of this act shall not be precluded from eligibility  
131 for assistance under the Massachusetts Water Pollution Abatement Trust established by section  
132 two of the chapter twenty-nine C.

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

149 or the contractor may terminate said contract under the terms and conditions of said contract.

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

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

170 Notwithstanding the provisions of chapter thirty-two of the General Laws to the contrary, the  
171 normal yearly amount of the retirement allowance for an eligible employee who is employed by

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

195 provisions of this act and such schedule shall be designed to reduce the additional pension  
196 liability attributable to such costs and liabilities to zero on or before June thirtieth, two thousand  
197 and seventeen; provided however, that said board shall triennially update such schedule until  
198 said June thirtieth, two thousand and seventeen. In each of the fiscal years until the actuarial  
199 liability determined under this section shall be reduced to zero, it shall be deemed an obligation  
200 of the county to fund such liability and there shall be appropriated in each such fiscal year the  
201 amount required by the funding schedule and the updates thereto.

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

- 209 1. Publish an appropriate notice to the Central Register, published by the Secretary of State.
- 210 2. Inform the collective bargaining agent representing employees of said facility (ies) or  
211 station(s)

212 Section 71. Notwithstanding any general or special law to the contrary, sections sixty  
213 through seventy-one inclusive of this chapter may be accepted, in the case of a city with a Plan  
214 D or Plan E charter by the city council, with the approval of the mayor; in the case of a town  
215 with a town council, by the town council; in the case of all other towns, by the Board of  
216 Selectmen, in the case of an existing water and sewer commission, by its board of  
217 commissioners.

218 Section 3. This act will take effect upon passage.