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Office of the Inspector General

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The Honorable Brian S. Dempsey, Chair
House Ways and Means Committee
State House, Room 243
Boston, MA 02133

Dear Chairman Dempsey:

I write to you regarding one proposed amendment included in Senate bill 2021, *An Act Improving Drinking Water and Wastewater Infrastructure*. Section 12A of the bill, which would amend section 11*I* of chapter 25A, would not save money or promote conservation, but would increase the risk of fraud, waste and abuse. As described below, my Office has seen Section 11*I* misused in the past, and the proposed amendment would exacerbate the problem. I hope the provision is not included in the final bill as this would be a great disservice to the taxpayers.

Under section 11*I* of chapter 25A, state agencies, building authorities and municipalities that want to make energy-saving upgrades – such as energy-efficient boilers, light fixtures, roofs and windows – may use a request-for-qualifications process to procure such improvements. A government entity may only use this process, however, if the vendor guarantees the amount of energy savings that it will achieve; if the vendor does not achieve the guaranteed energy savings, it must reimburse the agency, authority or municipality "the shortfall amount." *See* M.G.L. c. 25A, § 11*I*(h). The vendor's "guarantee," if verified, allows the government entity to enter into a multi-year agreement based on negotiated prices.

Currently, Section 11*I* applies only to energy management services that seek to decrease energy or water consumption, and funding may be tied to the vendor's performance in reducing such consumption. Specifically, payments for energy management services may be based on either (1) cost savings that the vendor achieves by reducing energy or water consumption; or (2) revenues the government entity gains because of the vendor's efforts to reduce energy and water costs.

Section 12A of the bill removes this link to the overarching goals of energy and cost savings. Section 12A will allow, under the guise of energy management services, for the installation of devices that will not save energy or water; nor will they provide energy cost savings. In particular, the bill allows for payments to be based on the installation of "metering or related equipment." Payments can also be based on cost savings that are attributable to "improved system accuracy." Meters and other equipment that improve system accuracy do not reduce consumption;

nor do they save money. Rather, such equipment more accurately records water and energy usage. Adding this language to section 11*I* would be contrary to the purpose of energy management services which, by definition, are "primarily intended to reduce the cost of energy and water in operating buildings." *See* M.G.L. c. 25A, § 3.

The bill also creates a risk of fraud, waste and abuse. First, the bill does not define "system." Therefore, payments could be based on any "system," whether or not it is related to energy or water management. This ambiguity makes the bill vulnerable to fraud and abuse.

Even more significantly, my Office is aware of situations in which municipalities have been told that new devices would measure resource usage so much more accurately than the old devices that the municipalities would collect substantial additional revenues over the course of the contract. This projected revenue increase is then used to justify large-dollar projects for various upgrades to municipal buildings. That is, the project is presented to the municipality as one that will pay for itself – and other costly projects – over the course of the contract. Not only are the revenue projections often seriously flawed, there is no guarantee that the increased revenue will be realized, leaving municipalities with unfunded projects. Indeed, my Office has found no evidence that more accurate meters lead to markedly increased revenues. In fact, my Office has seen instances where the opposite is true. Even if there is an increase in revenues, it is not related to energy cost savings or conservation. Currently, meters and improved system accuracy do not count as components of guaranteed savings. As previously discussed, however, Section 12A would include these as valid components of guaranteed savings, thereby increasing the risk of fraud and abuse.

Finally, Section 12A of the bill also removes the clarification that the payment measures must be attributable to the vendor's performance. For instance, the bill will allow the vendor's payments to be based on any decrease in energy and water consumption, even if the vendor had nothing to do with that reduction. Under the current language, it is clear that the vendor must be involved with the actions taken in order for payments to be based on those measures. We urge you not to remove this connection.

I strongly urge you to remove section 12A from the bill. The proposed change to the law provides neither energy savings nor guaranteed revenue increases. The language will negatively impact the public procurement process and lead to "unfunded" project costs. The potential for fraud, waste and abuse is very high. I do not believe it is in the best interests of the taxpayers to include this language. If you have any questions, please feel free to contact me.

Sincerely,

Glenn A. Cunha
Inspector General