

**HOUSE . . . . . No. 00839**

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The Commonwealth of Massachusetts

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PRESENTED BY:

*John W. Scibak*

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*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to the procurement of wastewater treatment and disposal services.

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PETITION OF:

NAME:

| DISTRICT/ADDRESS:

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# HOUSE . . . . . No. 00839

By Mr. John W Scibak of South Hadley, petition (accompanied by bill, House, No. 00839) of [petitioners] relative to the procurement of wastewater treatment and disposal services. Joint Committee on State Administration and Regulatory Oversight.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE  
□ HOUSE  
□ , NO. 3037 OF 2009-2010.]

## The Commonwealth of Massachusetts

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**In the Year Two Thousand Eleven**  
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An Act relative to the procurement of wastewater treatment and disposal services.

*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. Notwithstanding the provisions of any general or special law to the  
2 contrary, a city, town, or district which accepts this chapter may enter into contracts for the lease  
3 or sale, operation and maintenance, financing, design and construction of modifications and  
4 installation of new equipment and systems at a wastewater treatment plant, sewers and pump  
5 stations to ensure adequate services and to ensure the ability of said wastewater treatment plant,  
6 sewers and pump stations to operate in full compliance with all applicable requirements of  
7 federal, state and local laws; provided, however that such contracts shall not be subject to the  
8 competitive bid requirements set forth in sections 38A to 38O, inclusive, of chapter 7, section  
9 39M of chapter 30 or sections 44A to 44M, inclusive, of chapter 149 of the General Laws;

10 provided further, that each such contract shall be awarded pursuant to the provisions of chapter  
11 30B of the General Laws, except for clause (3) of subsection (b), clause (3) of subsection (e) and  
12 subsection (g) of section 6 and sections 13 and 16.

13 The requests for proposals for such contracts shall specify the method for comparing proposals to  
14 determine the proposal offering the lowest overall cost to the city or town including, but not  
15 limited to, all capital financing, operating and maintenance costs. If the city or town awards a  
16 contract to an offeror who did not submit the proposal offering the lowest overall cost, said city  
17 or town shall explain the reason for the award in writing.

18 SECTION 2. (a) Notwithstanding the provisions of any general or special law to the contrary,  
19 contracts awarded pursuant to section 1 may provide for a term not exceeding 20 years and an  
20 option for renewal or extension of operations and maintenance services for one additional term  
21 not exceeding five years. The renewal or extension shall be at the sole discretion of the city or  
22 town in accordance with the original contract terms and conditions or contract terms and  
23 conditions more favorable to and acceptable to said city or town. Contracts entered into pursuant  
24 to this act may provide that, subject to a majority vote of the town meeting, or the city or town  
25 council, said city or town shall not be exempt from liability for payment of the costs to finance,  
26 permit, design and construct modifications or install new equipment and systems at the  
27 wastewater treatment plant, sewers and pump stations necessary to ensure the ability of said  
28 wastewater treatment plant, sewers and pump stations to operate in full compliance with all  
29 applicable requirements of federal, state and local laws; provided, however, that such costs shall  
30 be amortized over a period that is no longer than the useful life of such modifications, equipment  
31 and systems. Said city or town's payment obligations for all operations and maintenance services

32 shall be conditioned on the contractor's performance of such services in accordance with all  
33 contractual terms.

34 (b) Contracts entered into pursuant to this act may provide for such activities as may be deemed  
35 necessary to carry out the purposes authorized herein including, but not limited to, equipment,  
36 facility or land sale or lease, equipment installation and replacement, performance testing and  
37 operation, studies, land sale or lease, equipment installation and replacement, performance  
38 testing and operation, studies, design and engineering work, construction work, ordinary repairs  
39 and maintenance and the furnishing of all related material, supplies and services required for the  
40 wastewater treatment plant, sewers and pump stations and the management, operation,  
41 maintenance and repair of and improvements to said city or town's wastewater treatment plant,  
42 sewers and related pump stations.

43 SECTION 3. The city or town, acting through its Chief Procurement Officer established pursuant  
44 to chapter 30B, shall solicit proposals through requests for proposals which shall include those  
45 items in paragraphs (1) and (2) of subsection (b) of section 6 of chapter 30B of the General Laws  
46 and proposed key contractual terms and conditions to be incorporated into the contract, some of  
47 which may be deemed mandatory or nonnegotiable; provided, however, that the requests for  
48 proposals may request proposals or offer options for fulfillment of other contractual terms and  
49 such other matters as may be determined by said city or town.

50 SECTION 4. The Chief Procurement Officer shall make a preliminary determination of the most  
51 advantageous proposal from a responsible and responsive offeror taking into consideration price,  
52 estimated life-cycle costs and other evaluation criteria set forth in the request for proposals. Said  
53 Chief Procurement Officer may negotiate all terms of the contract not deemed mandatory or non-

54 negotiable with such offeror. If, after negotiation with such offeror, said Chief Procurement  
55 Officer determines that it is in said city or town's best interests, said Chief Procurement Officer  
56 may determine the next most advantageous proposal from a responsible and responsive offeror  
57 taking into consideration price, estimated life-cycle costs and other evaluation criteria set forth in  
58 the request for proposals and may negotiate all terms of the contract not deemed mandatory or  
59 nonnegotiable with such offeror. Said Chief Procurement Officer shall award the contract to the  
60 most advantageous proposal from a responsible and responsive offeror taking into consideration  
61 price, estimated life-cycle costs, the evaluation criteria set forth in the request for proposals and  
62 the terms of the negotiated contract. Subject to the approval of the board or officer authorized to  
63 enter into contracts on behalf of the city or town and, with respect to any contract in excess of  
64 five years, the authorization of the town meeting or the city or town council, said Chief  
65 Procurement Officer shall award the contract by written notice to the selected offeror within the  
66 time for acceptance specified in the request for proposals. Such award shall be subject to  
67 sections 5 and 6. The parties may extend the time for acceptance by mutual agreement.

68 SECTION 5. Notwithstanding any other provisions of this act, it shall be a mandatory term of  
69 any request for proposals issued by a city or town which already operates a wastewater treatment  
70 plant staffed by municipal employees and of any contract entered into by said city or town with  
71 any party regarding the subject matter of this act that any party which has entered into a contract  
72 pursuant to the terms of this act with said city or town shall require, in order to maintain stable  
73 and productive labor relations and to avoid interruption of the operation of the plant and to  
74 preserve the health, safety and environmental conditions of residents of said city or town and  
75 surrounding communities, that all employees working on the operation and maintenance of the  
76 wastewater treatment plant, sewers and pump stations be offered employment by any party

77 entering into a contract with said city or town for the operation and maintenance of said facilities  
78 and that any such party entering into a contract with said city or town, shall adopt all terms and  
79 conditions of employment provided by the last applicable labor agreement negotiated between  
80 the labor organization representing said employees and the applicable employer who has most  
81 recently employed said employees prior to entering into any contract pursuant to this act;  
82 provided, however, that any party entering into such contract with said city or town pursuant to  
83 this act shall pay all of said employees not less than the sum of applicable wages paid to said  
84 employees by the previous employer. Any such party entering into such contract with said city or  
85 town shall negotiate a successor agreement with the last applicable labor organization  
86 representing said employees prior to the expiration of the existing contract. Such parties shall  
87 agree to meet its legal obligations with regard to any labor organization representing employees  
88 engaged in the operation and maintenance of the wastewater treatment plant, sewer, and pump  
89 stations described herein. Notwithstanding any general or special law to the contrary, any party  
90 entering into such contract with said city or town shall provide all employees of said city or town  
91 working on the operation and maintenance of the wastewater treatment plant, sewers and pump  
92 stations with all of the rights and benefits, including retirement and pension benefits, that are at  
93 least equal to said employees' benefits provided by said city or town. Notwithstanding any other  
94 provisions of this act, any proposal not complying with the above terms shall be disqualified  
95 from consideration.

96 SECTION 6. Subject to the provisions of this act, any contract awarded hereunder shall be  
97 subject to such terms and conditions as the city or town shall determine to be in its best interests.  
98 Any such contract shall provide that, prior to the construction of modifications or installation of  
99 equipment and systems, said city or town shall cause a qualified wastewater engineer to

100 independently review and approve plans and specifications for such modifications, equipment  
101 and systems. Such contract shall further provide that prior to said city or town's acceptance of  
102 any modifications, equipment or systems, including work undertaken pursuant to section 8 and  
103 estimated to cost more than \$100,000, said city or town shall cause a qualified wastewater  
104 engineer to inspect such modifications, equipment and systems and certify that the construction  
105 or installation has been completed in accordance with the approved plans and specifications.

106 SECTION 7. Notwithstanding the provisions of any general or special law or rule or regulation  
107 to the contrary, the department of environmental protection may issue project approval  
108 certificates with respect to a contract procured pursuant to this chapter for wastewater treatment  
109 facility improvements, and any design and construction services included in such contract shall  
110 be eligible for assistance under the water pollution abatement trust established by section 2 of  
111 chapter 29C of the General Laws.

112 SECTION 8. The provisions of any general or special law or rule or regulation relating to the  
113 advertising, bidding or award of contracts, to the procurement of services or to the construction  
114 and design of improvements shall not be applicable to any selected offeror which is awarded a  
115 contract pursuant to this act, except as provided in this section. The construction of any new  
116 capital improvement or any renovation, modernization, installation or replacement work  
117 estimated to cost more than \$100,000, not specifically included in the initial contract for the  
118 lease or sale, operation and maintenance, design and construction of the wastewater treatment  
119 plant, sewers and pump stations, shall be procured on the basis of advertised sealed bids;  
120 provided, however, that bids need not be solicited if the contractor causes such construction,  
121 renovation, modernization, installation or replacement work to be completed without direct or  
122 indirect reimbursement from the city or town or other adjustment to the fees or costs paid by said

123 city or town including, but not limited to, any adjustment to sewer rates paid by said city or  
124 town's residents or businesses. Bids shall be based on detailed plans and specifications and the  
125 contract shall be awarded to the lowest responsible and eligible bidder. The contractor may act as  
126 an agent of said city or town in the solicitation of bids for the construction of any new capital  
127 improvement or for any renovation, modernization, installation or replacement work pursuant to  
128 this section; provided, however, that said city or town shall cause a qualified wastewater  
129 engineer to independently assess the need for such capital improvement, renovation,  
130 modernization, installation or replacement work and to review and approve the contractor's  
131 proposed plans and specifications prior to advertising for bids. Based on the recommendations of  
132 the qualified wastewater engineer, said city or town may approve, modify, or reject the  
133 contractors proposed plans and specifications. Any contract awarded pursuant to this act shall  
134 provide that, in the event that said city or town does not approve the contractor's proposed plans  
135 and specifications pursuant to this section, said city or town or the contractor may terminate the  
136 contract under the terms and conditions of such contract.