

SENATE, No. 2135

[Senate, June 19, 2008 – Text of the new draft from the committee on State Administration and Regulatory Oversight for Senate, No. 1446]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT AUTHORIZING A GOVERNMENTAL BODY 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 SECTION 1. For the purposes of this act, the following definitions shall apply:

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

6 "water storage facility" shall be defined as any above or below ground facility or tank,
7 standpipe, water tower or any other building or structure used to store water for public drinking
8 water supply, fire-protection or any other purpose.

9 SECTION 2. Chapter 40 of the General Laws is hereby amended by adding the following
10 eleven sections:

11 Section 60. Notwithstanding any general or special law to the contrary, a governmental
12 body may in accordance with the provisions of this chapter, enter into a contract for the
13 inspection, maintenance, repair, modification or any combination thereof, necessary for water
14 storage facilities to ensure adequate services and to ensure the ability of water storage facilities to
15 operate in full compliance with all applicable requirements of federal, state and local law. Said
16 contract shall be awarded pursuant to the provisions of chapter thirty B except for paragraph (3)
17 of subsection (b), paragraph (3) of subsection (e), subsection (g) of section six and sections
18 thirteen and sixteen.

19 The request for proposals for such contract shall specify the method for comparing
20 proposals to determine the proposal offering the most advantageous proposal to a governmental
21 body including, but not limited to, all capital financing, operating and maintenance costs,
22 warranty requirements, indemnity and security, experience, and technical competence. If a
23 contract is awarded to an offeror who submitted the most advantageous proposal, but who did not
24 offer the lowest overall cost, the governmental body shall explain the reason for the award in
25 writing.

26 Section 61. (a) Notwithstanding the provisions of any general or special law to the
27 contrary, a contract or contracts awarded pursuant to section sixty may provide for a term, not
28 exceeding twenty years, and an option for renewal or extension of inspection, , maintenance
29 repair or modification services for one additional term not exceeding ten years in accordance with
30 the terms of the original contract. A contract entered into pursuant to section sixty to seventy-
31 one, inclusive, may provide that the governmental body shall not be exempt from liability for
32 payment of the costs to inspect, maintain, repair or, modify or install new equipment and systems
33 at any water storage facilities necessary to ensure the ability of said facilities, to operate in full
34 compliance with all applicable requirements of federal, state and local law, provided that such
35 costs shall be amortized over a period that is no longer than the useful life of said modifications,

36 equipment and systems. A governmental body's payment obligation for all inspection,
37 maintenance repair or modification services shall be conditioned on the contractor's performance
38 of said services in accordance with all contractual terms.

39 (b) Any contract entered into pursuant to sections sixty to seventy-one, inclusive, may
40 provide for such activities deemed necessary to carry out the purposes authorized herein,
41 including, but not limited to, financing, equipment installation and replacement, studies,
42 permitting, design and engineering work, construction work, ordinary repairs and maintenance,
43 and the furnishing of all related material, supplies and services required for the water storage
44 facilities and the management, construction, maintenance and repair of and improvements to
45 said facilities.

46 Section 62. The chief procurement officer of a governmental body shall solicit proposals
47 through a request for proposals which shall include those items in paragraphs (1) and (2) of
48 subsection (b) of section six of chapter thirty B and proposed key contractual terms and
49 conditions to be incorporated into the contract, some of which may be deemed mandatory or non-
50 negotiable; provided, however, that the request for proposals may request proposals or offer
51 options for fulfillment of other contractual terms, and such other matters as may be determined by
52 the governmental body. All subcontractors under the bidder must maintain and participate in a
53 bona fide Massachusetts apprentice training program as defined by M.G.L c.23 s. 11H & 11I for
54 each each apprenticeable trade or occupation represented in its workforce that is approved by the
55 division of apprentice training of the department of labor and workforce development of the
56 Commonwealth and must abide by the apprentice to journeymen ratio for each trade prescribed
57 therein in the performance of the contract.

58 Section 63. The chief procurement officer of a governmental body shall make a
59 preliminary determination of the most advantageous proposal from a responsible and responsive

60 offeror taking into consideration price, estimated life-cycle costs, allocation of risks and
61 responsibilities and other evaluation criteria set forth in the request for proposal. The chief
62 procurement officer may negotiate all terms of the contract not deemed mandatory or non-
63 negotiable with such offeror. If, after negotiation with such offeror, the chief procurement officer
64 determines that it is in the governmental body's best interests to terminate negotiations with said
65 offeror, the chief procurement officer shall notify said offeror in writing that negotiations are
66 terminated and shall enter into negotiations with the next most advantageous proposal from a
67 responsible and responsive offeror taking into consideration price, estimated life cycle costs,
68 allocation of risks and responsibilities and other evaluation criteria set forth in the request for
69 proposals, and may negotiate all terms of the contract not deemed mandatory or non-negotiable
70 with such offeror. The chief procurement officer shall award the contract to the most
71 advantageous proposal from a responsible and responsive offeror taking into consideration price,
72 estimated life cycle costs, allocations of risks and responsibilities and other evaluation criteria set
73 forth in the request for proposal and the terms of the negotiated contract. Subject to the approval
74 of the governmental body, the chief procurement officer shall award the contract by written
75 notice to the selected offeror within the time for acceptance specified in the request for proposals.
76 Such award shall be subject to this section and sections sixty to sixty-two and sections sixty-four
77 to seventy-one, inclusive. The parties may extend the time for acceptance by mutual agreement.

78 Section 64. Reserved.

79 Section 65. Subject to the provisions of this section and section sixty to sixty-four and
80 sections sixty-six to seventy-one inclusive, any contract awarded pursuant thereto shall be subject
81 to such terms and conditions as the governmental city or town shall determine to be in the best
82 interests of said governmental body.

83 Section 66. Notwithstanding the provisions of any general or special law or regulation to
84 the contrary, the Department of Environmental Protection may issue project approval certificates
85 with respect to the contract procured by a governmental body for water storage facilities.
86 Subject to the requirements of any applicable state or federal laws or regulations, any
87 design and construction services included in such contract and any design and construction
88 services procured in accordance with the provisions of this act shall not be precluded from
89 eligibility for assistance under the Massachusetts Water Pollution Abatement Trust established by
90 section two of the General Laws chapter twenty-nine C.

91 Section 67. The provisions of any general or special law or special act or regulation
92 relating to the advertising, bidding or award of contracts, the procurement of services or to the
93 construction and design of improvements, shall not be applicable to any selected offeror which is
94 awarded a contract pursuant to sections sixty to seventy-one, inclusive, except as provided in this
95 section, provided further, however, that the provisions of sections twenty-six to twenty-seven F,
96 inclusive, and section twenty-nine of chapter one hundred forty-nine shall apply.

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

102 Section 69. Reserved.

103 Section 70. It shall be a mandatory requirement that no less than ninety days prior to the
104 commencement of any procurement process undertaken pursuant to the provisions of sections
105 sixty-one to seventy-one for the design, construction, inspection, maintenance, or modification

106 for work on the water storage facilities, that the governmental body shall make public
107 notification of said process by the following means:

108 1. Publish an appropriate notice in the Central Register, published by the Secretary of
109 State.

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