

SENATE No. 2332

Text of amendment (62) (offered by Senator Tarr) to the Ways and Means amendment (Senate, No. 2311) An Act promoting housing and sustainable development.

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

1 by inserting at the end thereof the following new sections:-

2 SECTION __. Chapter 149A of the General Laws, as appearing in the 2014 Official
3 Edition, is hereby amended by inserting at the end thereof the following new section:-

4 Section 22. Design build contracts for wastewater and water treatment facilities

5 A city, town or district which accepts the provisions of this chapter may enter into
6 contracts for the lease or sale, operation and maintenance, financing, design and construction of
7 modifications and installation of new equipment and systems at a wastewater treatment plant,
8 sewers and pump stations to ensure adequate services and to ensure the ability of said wastewater
9 treatment plant, sewers and pump stations to operate in full compliance with all applicable
10 requirements of federal, state and local laws; provided, however that such contracts shall not be
11 subject to the competitive bid requirements set forth in sections 38A to 38O, inclusive, of chapter
12 7, section 39M of chapter 30 or sections 44A to 44M, inclusive, of chapter 149 of the General
13 Laws; provided further, that each such contract shall be awarded pursuant to the provisions of
14 chapter 30B of the General Laws, except for clause (3) of subsection (b), clause (3) of subsection
15 (e) and subsection (g) of section 6 and sections 13 and 16.

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

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

37 (b) Contracts entered into pursuant to this act may provide for such activities as may be
38 deemed necessary to carry out the purposes authorized herein including, but not limited to,

39 equipment, facility or land sale or lease, equipment installation and replacement, performance
40 testing and operation, studies, land sale or lease, equipment installation and replacement,
41 performance testing and operation, studies, design and engineering work, construction work,
42 ordinary repairs and maintenance and the furnishing of all related material, supplies and services
43 required for the wastewater treatment plant, sewers and pump stations and the management,
44 operation, maintenance and repair of and improvements to said city or town's wastewater
45 treatment plant, sewers and related pump stations.

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

53 SECTION __. The Chief Procurement Officer shall make a preliminary determination of
54 the most advantageous proposal from a responsible and responsive offeror taking into
55 consideration price, estimated life-cycle costs and other evaluation criteria set forth in the request
56 for proposals. Said Chief Procurement Officer may negotiate all terms of the contract not
57 deemed mandatory or non-negotiable with such offeror. If, after negotiation with such offeror,
58 said Chief Procurement Officer determines that it is in said city or town's best interests, said
59 Chief Procurement Officer may determine the next most advantageous proposal from a
60 responsible and responsive offeror taking into consideration price, estimated life-cycle costs and
61 other evaluation criteria set forth in the request for proposals and may negotiate all terms of the

62 con- tract not deemed mandatory or nonnegotiable with such offeror. Said Chief Procurement
63 Officer shall award the contract to the most advantageous proposal from a responsible and
64 responsive offeror taking into consideration price, estimated life-cycle costs, the evaluation
65 criteria set forth in the request for proposals and the terms of the negotiated contract. Subject to
66 the approval of the board or officer authorized to enter into contracts on behalf of the city or
67 town and, with respect to any contract in excess of five years, the authorization of the town
68 meeting or the city or town council, said Chief Procurement Officer shall award the contract by
69 written notice to the selected offeror within the time for acceptance specified in the request for
70 proposals. Such award shall be subject to sections 5 and 6. The parties may extend the time for
71 acceptance by mutual agreement.

72 SECTION __. Notwithstanding any other provisions of this act, it shall be a mandatory
73 term of any request for proposals issued by a city or town which already operates a wastewater
74 treatment plant staffed by municipal employees and of any contract entered into by said city or
75 town with any party regarding the subject matter of this act that any party which has entered into
76 a contract pursuant to the terms of this act with said city or town shall require, in order to
77 maintain stable and productive labor relations and to avoid interruption of the operation of the
78 plant and to preserve the health, safety and environmental conditions of residents of said city or
79 town and surrounding communities, that all employees working on the operation and
80 maintenance of the wastewater treatment plant, sewers and pump stations be offered employment
81 by any party entering into a contract with said city or town for the operation and maintenance of
82 said facilities and that any such party entering into a contract with said city or town, shall adopt
83 all terms and conditions of employment provided by the last applicable labor agreement
84 negotiated between the labor organization representing said employees and the applicable

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

100 SECTION __. Subject to the provisions of this act, any contract awarded hereunder shall
101 be subject to such terms and conditions as the city or town shall determine to be in its best
102 interests. Any such contract shall provide that, prior to the construction of modifications or
103 installation of equipment and systems, said city or town shall cause a qualified wastewater
104 engineer to independently review and approve plans and specifications for such modifications,
105 equipment and systems. Such contract shall further provide that prior to said city or town's
106 acceptance of any modifications, equipment or systems, including work undertaken pursuant to
107 section 8 and estimated to cost more than \$100,000, said city or town shall cause a qualified

108 wastewater engineer to inspect such modifications, equipment and systems and certify that the
109 construction or installation has been completed in accordance with the approved plans and
110 specifications.

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

117 SECTION __. The provisions of any general or special law or rule or regulation relating to
118 the advertising, bidding or award of contracts, to the procurement of services or to the
119 construction and design of improvements shall not be applicable to any selected offeror which is
120 awarded a contract pursuant to this act, except as provided in this section. The construction of
121 any new capital improvement or any renovation, modernization, installation or replacement work
122 estimated to cost more than \$100,000, not specifically included in the initial contract for the
123 lease or sale, operation and maintenance, design and construction of the wastewater treatment
124 plant, sewers and pump stations, shall be procured on the basis of advertised sealed bids;
125 provided, however, that bids need not be solicited if the contractor causes such construction,
126 renovation, modernization, installation or replacement work to be completed without direct or
127 indirect reimbursement from the city or town or other adjustment to the fees or costs paid by said
128 city or town including, but not limited to, any adjustment to sewer rates paid by said city or
129 town's residents or businesses. Bids shall be based on detailed plans and specifications and the
130 contract shall be awarded to the lowest responsible and eligible bidder. The contractor may act as

131 an agent of said city or town in the solicitation of bids for the construction of any new capital
132 improvement or for any renovation, modernization, installation or replacement work pursuant to
133 this section; provided, however, that said city or town shall cause a qualified wastewater
134 engineer to independently assess the need for such capital improvement, renovation,
135 modernization, installation or replacement work and to review and approve the contractor's
136 proposed plans and specifications prior to advertising for bids. Based on the recommendations of
137 the qualified wastewater engineer, said city or town may approve, modify, or reject the
138 contractor's proposed plans and specifications. Any contract awarded pursuant to this act shall
139 provide that, in the event that said city or town does not approve the contractor's proposed plans
140 and specifications pursuant to this section, said city or town or the contractor may terminate the
141 contract under the terms and conditions of such contract.