

Senate, No. 2449

[May 20, 2010 – Substituted by amendment by the Senate (Ways and Means) for Senate, No. 2135.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Ten

AN ACT AUTHORIZING GOVERNMENTAL BODIES TO ENTER INTO CONTRACTS FOR THE INSPECTION, MAINTENANCE, REPAIR OR MODIFICATION OF WATER STORAGE FACILITIES.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is forthwith to authorize governmental bodies to enter into certain procurement contracts relative to water storage facilities, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public health.

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

3 Section 61. As used in this section and sections 62 to 70, inclusive, the following words
4 shall have the following meanings unless the context clearly requires otherwise:

5 "Governmental body", a city, town, county, water district or wastewater district.

6 "Two-thirds vote", in a city, a 2/3 vote of the city council with the approval of the mayor,
7 in a town, a 2/3 vote of the board of selectmen, in a district, a 2/3 vote of the commissioners.

8 “Water storage facility”, an above or below-ground facility or tank, standpipe, water
9 tower or other building or structure used to store water for, without limitation, public drinking
10 water supply and fire protection.

11 Section 62. Pursuant to sections 61 to 70, inclusive, a governmental body may enter into
12 contracts for the inspection, maintenance, repair or modification of a water storage facility to
13 ensure adequate services and to ensure the ability of the water storage facility to comply with the
14 requirements of federal, state and local laws. Contracts shall be awarded in accordance with all
15 of chapter 30B, except for clause (3) of subsection (b) of section 6, clause (3) of subsection (e) of
16 said section 6, subsection (g) of said section 6 and sections 13 and 16.

17 Section 63. (a) A contract awarded under section 62 may provide for a term, not
18 exceeding 20 years, and an option for renewal or extension of inspection, maintenance repair or
19 modification services for 1 additional term not exceeding 10 years that contains similar terms to
20 the original contract. When a contract is to contain an option for renewal or extension, the
21 solicitation shall include notice of that provision. A renewal or extension shall be at the sole
22 discretion of the governmental body under the terms and conditions of the original contract or on
23 such other terms and conditions more favorable to and acceptable to the governmental body.

24 (b) A contract entered into under section 62 may provide that the governmental body’s
25 obligation under the contract for payment of the annual costs to inspect, maintain, repair, modify
26 or install a water storage facility shall be subject to appropriation, but a governmental body shall
27 not be exempt from liability for the payment of the amounts amortized for completed capital
28 modifications, repairs or installation of equipment and systems at a water storage facility. Costs
29 shall be amortized over a period that shall not be longer than the useful life of the modifications

30 or repairs or the equipment and systems installed. A governmental body's payment obligation
31 for any inspection, maintenance, repair or modification services shall be contingent upon the
32 contractor's performance of the services under the terms of the contract.

33 (c) A contract entered into under section 62 may provide for any activities deemed
34 necessary to carry out the purposes authorized in sections 61 to 70, inclusive, which may include,
35 but shall not be limited to, equipment installation and replacement, studies, permitting, design
36 and engineering work, construction work, ordinary repairs and maintenance, and the furnishing
37 of all related material, supplies and services required for a water storage facility and the
38 management, construction, maintenance and repair of and improvements to the facility.

39 Section 64. (a) The chief procurement officer of a governmental body shall solicit
40 proposals through a request for proposals which shall include those items in paragraphs clauses
41 (1) and (2) of subsection (b) of section 6 of chapter 30B and proposed key contractual terms and
42 conditions to be incorporated into the contract, some of which may be deemed mandatory or
43 non-negotiable; provided, however, that the request for proposals may request proposals or offer
44 options for fulfillment of other contractual terms and such other matters as may be determined by
45 the governmental body.

46 (b) All subcontractors under the offeror shall maintain and participate in a bona fide
47 apprentice training program as prescribed in sections 11H and 11I of chapter 23 for each trade
48 or occupation with an apprentice training program and approved by the division of apprentice
49 training in the department of labor and workforce development and shall abide by the apprentice-
50 to-journeyman ratio for each such trade as prescribed in said chapter 23 while in the performance
51 of the contract.

52 Section 65. The chief procurement officer of a governmental body shall award the
53 contract, subject to a two-thirds vote of the governmental body, to the most advantageous
54 proposal from a responsible and responsive offeror taking into consideration price and the
55 evaluation criteria set forth in the request for proposals, as defined in section 2 of chapter
56 30B. The governmental body shall provide written notice to the selected offeror within the time
57 for acceptance specified in the request for proposals. The awarding of the contract shall be
58 subject to sections 61 to 70, inclusive. The governmental body and the offeror may extend the
59 time for acceptance by mutual agreement.

60 Section 66. A contract awarded under sections 61 to 70, inclusive, shall be subject to such
61 terms and conditions as the governmental body shall determine to be in its best interest.

62 Section 67. The department of environmental protection may issue project approval
63 certificates with respect to capital project costs identified with a contract procured by a
64 governmental body under sections 61 to 70, inclusive, for facilities improvements. Construction
65 services included in a contract shall be eligible for assistance under the Water Pollution
66 Abatement Trust established in section 2 of chapter 29C.

67 Section 68. No general or special law or rule or regulation relating to the advertising,
68 bidding or awarding of contracts, for the procurement of services or for the construction and
69 design of improvements shall apply to a selected offeror which is awarded a contract under
70 sections 61 to 70, inclusive, except for sections 26 to 27F, inclusive, and section 29 of chapter
71 149.

72 Section 69. A contract made in violation of any provision of sections 61 to 70, inclusive,
73 shall be void and the governmental body shall make no payment under any such contract. Minor
74 informalities shall not render a contract void.

75 Section 70. Public notice of the request for proposals shall be published in the central
76 register pursuant to section 20A of chapter 9 at least 90 days before the time specified for receipt
77 of proposals in the request for proposals.