

HOUSE No. 3741

The Commonwealth of Massachusetts

PRESENTED BY:

Sarah K. Peake and Julian Cyr

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 adoption of the accompanying bill:

An Act authorizing the town of Orleans to enter into contracts for a sewer works system and operation.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

Sarah K. Peake

4th Barnstable

Julian Cyr

Cape and Islands

HOUSE No. 3741

By Representative Peake of Provincetown and Senator Cyr, a joint petition (accompanied by bill, House, No. 3741) of Sarah K. Peake and Julian Cyr (by vote of the town) that the town of Orleans be authorized to enter into contracts for a sewer works system. Municipalities and Regional Government. [Local Approval Received.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act authorizing the town of Orleans to enter into contracts for a sewer works system and operation.

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. (a) Notwithstanding any general or special law to the contrary, the town of
2 Orleans may enter into contracts for the lease or sale, operation and maintenance, repair or
3 replacement, financing, design, construction, installation and modifications to the sewer works
4 system (using traditional and non-traditional technologies) necessary to ensure adequate services
5 and ensure the ability of the town's sewer works system, as such terms are defined in Section 9,
6 to operate in full compliance with all applicable requirements of federal, state and local law;
7 provided, however, that such contracts shall not be subject to sections 14-21, inclusive of chapter
8 149A of the General Laws and the competitive bid requirements set forth in sections 44-57,
9 inclusive, of chapter 7C (formerly M.G.L. c. 7, §§38½ - O), section 39M of chapter 30 or
10 sections 44A to 44M, inclusive, of chapter 149 of the General Laws; provided, further, that each
11 such contract shall be awarded pursuant to chapter 30B of the General Laws, except for clause

12 (3) of paragraph (b) of section 6, clause (3) of paragraph (e) and paragraph (g) of said section 6
13 and sections 13 and 16 of said chapter 30B.

14 (b) The request for proposals for such contracts shall specify the evaluation criteria and
15 method for comparing proposals to determine the proposal offering the lowest overall cost to the
16 town, including, but not limited to, all capital equipment and capital improvement costs,
17 operating and maintenance costs and capital financing costs. If a contract is awarded to an
18 offeror who did not submit the proposal offering the lowest overall cost, the town shall explain
19 the reason for the award in writing.

20 (c) The request for proposals shall set forth mandatory performance guarantees that the
21 selected offeror will be required to meet in operating the sewer works system, as constructed or
22 improved. The contract which is negotiated with the selected offeror based on the request for
23 proposals shall obligate the selected offeror to meet such mandatory performance guarantees,
24 and shall set forth the minimum design requirements for such construction or improvements and
25 the acceptance tests to be conducted upon the completion of the construction or improvements in
26 order to demonstrate that the system is capable of meeting the performance guarantees.

27 SECTION 2. (a) Notwithstanding any general or special law to the contrary, contracts
28 awarded pursuant to Section 1 may provide for a term, not exceeding 20 years, and an option for
29 renewal or extension of operation, maintenance, repair and replacement services for 1 additional
30 term not exceeding 5 years. Any renewal or extension shall be at the sole discretion of the town
31 in accordance with the original contract terms and conditions or contract terms and conditions
32 more favorable to and acceptable to the town.

33 (b) A contract entered into pursuant to this act may provide that, subject to the requisite
34 vote of town meeting, the town shall not be exempt from liability for payment of the costs to
35 lease, finance, permit, design, construct and install modifications, new equipment and systems
36 for the sewer works system and to operate, maintain, repair and replace the sewer works system
37 as necessary to ensure the ability of the sewer works system to operate in full compliance with
38 all applicable requirements of federal, state and local law, provided that any costs relating to
39 leasing, financing, permitting, design, construction and installation of modifications, new
40 equipment and systems shall be amortized over a period that is no longer than the useful life of
41 said modifications, equipment and systems. The town's payment obligations for all operations
42 and maintenance services shall be conditioned on the contractor's performance of such services
43 in accordance with all contractual terms.

44 (c) A contract entered into pursuant to this act may provide for such activities deemed
45 necessary to carry out the purposes authorized herein, including, but not limited to, equipment
46 purchases, facility or land sale or lease, equipment installation, repair and replacement,
47 performance testing and operation, studies, design and engineering work, construction work,
48 ordinary repairs and maintenance, and the furnishing of all related material, supplies and services
49 required for the construction, management, maintenance, operation, and repair and replacement
50 of the town's sewer works system.

51 SECTION 3. The town administrator of the town of Orleans shall solicit proposals
52 through a request for proposals which shall include those items in clauses (1) and (2) of
53 paragraph (b) of section 6 of chapter 30B of the General Laws and the proposed key contractual
54 terms and conditions to be incorporated into the contract, some of which may be deemed
55 mandatory or nonnegotiable; provided, however, that such request for proposals may request

56 proposals or offer options for fulfillment of other contractual terms, and such other matters as
57 may be determined by the town. The request for proposals shall provide for the separate
58 submission of price and shall indicate when and how the offerors shall submit price.

59 SECTION 4. The town administrator of the town of Orleans shall make a preliminary
60 determination of the most advantageous proposal from a responsible and responsive offeror
61 taking into consideration price, estimated life-cycle costs and the other evaluation criteria set
62 forth in the request for proposals. The town administrator may negotiate all terms of the contract
63 not deemed mandatory or nonnegotiable with such offeror. If after negotiation with such offeror,
64 the town administrator determines that it is in the town's best interests, the town administrator
65 may initiate negotiations with the next most advantageous proposal from a responsible and
66 responsive offeror taking into consideration price, estimated life-cycle costs and the other
67 evaluation criteria set forth in the request for proposals, and may negotiate all terms of the
68 contract not deemed mandatory or nonnegotiable with such offeror. The town administrator
69 shall award the contract to the most advantageous proposal from a responsible and responsive
70 offeror taking into consideration price, estimated life-cycle costs, the evaluation criteria set forth
71 in the request for proposals, and the terms of the negotiated contract. Subject to the approval of
72 the board of selectmen and, to the extent required with respect to any contract in excess of five
73 years, the authorization of the town meeting, the town administrator shall award the contract by
74 written notice to the selected offeror within the time for acceptance specified in the request for
75 proposals. The parties may extend the time for acceptance by mutual agreement.

76 SECTION 5. Subject to this act, any contract awarded hereunder shall be subject to such
77 terms and conditions as the town administrator and board of selectmen of the town of Orleans
78 shall determine to be in the best interests of the town and shall be authorized by a majority vote

79 of the board of selectmen. Any such contract shall provide that prior to the construction,
80 modification or installation of new equipment and systems, the town shall cause a qualified
81 wastewater engineer to independently review and approve plans and specifications for the
82 modifications, new equipment and systems. Such contract shall further provide that prior to
83 acceptance of any modifications, new equipment or systems, including work undertaken
84 pursuant to Section 6 and estimated to cost more than \$100,000, adjusted in accordance with
85 adjustment factors as determined by the Town, the Town shall cause a qualified wastewater
86 engineer to inspect such modifications, new equipment and systems and certify that the
87 construction or installation has been completed in accordance with the approved plans and
88 specifications.

89 SECTION 6. The provisions of any general or special law or regulation relating to the
90 advertising, bidding or award of contracts, to the procurement of services or to the design and
91 construction of improvements, except the provisions of sections 26 to 27H, inclusive, of chapter
92 149 of the General Laws, shall not be applicable to any selected offeror which is awarded a
93 contract as provided in this section. The construction of any new capital improvement or any
94 renovation, modernization, installation, repair or replacement work estimated to cost more than
95 \$100,000, adjusted in accordance with adjustment factors as determined by the town, not
96 specifically included in the initial contract or contracts for the lease or sale, operation or
97 maintenance, financing, design, construction, repair or replacement, and installation of
98 modifications, new equipment and systems necessary for any particular part of the sewer works
99 system, shall be procured on the basis of advertised sealed bids; provided, however, that bids
100 need not be solicited if the contractor causes such construction, renovation, modernization,
101 installation, repair or replacement work to be completed without direct or indirect reimbursement

102 from the town, or other adjustment to the fees paid by the town, including, but not limited to, any
103 adjustment to sewer rates paid by the town users. Bids shall be based on detailed plans and
104 specifications and the contract shall be awarded to the lowest responsible and eligible bidder.
105 The contractor may act as an agent of the town in solicitation of bids for the construction of any
106 new capital improvement or for any renovation, modernization, installation, repair or
107 replacement work pursuant to this section; provided that the town shall cause a qualified
108 wastewater engineer to independently assess the need for such capital improvement, renovation,
109 modernization, installation, repair or replacement work and to review and approve the
110 contractor's proposed plans and specifications prior to advertising for bids. Based on the
111 recommendation of the qualified wastewater engineer, the town may approve, modify, or reject
112 the contractor's proposed plans and specifications.

113 SECTION 7. Notwithstanding any general or special law or regulation to the contrary,
114 the department of environmental protection may issue project approval certificates with respect
115 to the design/build contract or contracts procured by the town under this act for operation and
116 maintenance, repair or replacement, design, construction, installation and modifications to the
117 sewer works system, and any such design/build services included in such contract or contracts
118 shall be eligible for assistance under the Massachusetts Water Pollution Abatement Trust
119 established by section 2 of chapter 29C of the General Laws, and any future revolving loan fund
120 programs established by the commonwealth or the department of environmental protection.

121 SECTION 8. The selected offeror shall furnish to the town performance bonds, payment
122 bonds, or other forms of security for the selected offeror's obligations, and insurance, satisfactory
123 to the Town.

124 SECTION 9. The following words as used in this act shall, unless the context requires
125 otherwise, have the following meanings:

126 "Sewer works system", the proposed and/or existing sewer works system, including,
127 without limiting the generality of the foregoing, traditional and non-traditional technologies, all
128 works, instrumentalities or parts thereof, all main, trunk, intercepting, connecting, lateral, force
129 mains, private property components (as accepted by the town), and other adjuncts thereto,
130 wastewater treatment facilities, effluent disposal facilities, septage receiving and treatment
131 facilities, and pump stations and any other property or interests in property, real or personal,
132 incidental to and included in such sewer works system, and all facilities, betterments, extensions,
133 improvements and enlargements thereto.

134 SECTION 10. All contracts or subcontracts for new construction, renovation,
135 modernization, improvement or capital improvements to the town of Orleans' sewer works
136 system shall be awarded only to persons or entities whose bids or proposals are subject to such
137 persons or entities being signatory to a project labor agreement with the appropriate labor
138 organizations which shall include an obligation for such labor organizations and its constituent
139 members not to strike with respect to the work on such construction project and which shall also
140 establish uniform work rules and schedules for the project. Such project agreement shall be
141 entered into in order to facilitate the timely and efficient completion of the construction of such
142 improvements and to make available a ready and adequate supply of highly trained, skilled craft
143 workers who shall provide a negotiated commitment to assure labor stability and labor peace
144 over the life of this project. The applicable entity responsible for any construction, renovation,
145 modernization, improvement or capital improvement to the town's sewer works system shall
146 designate a general contractor, project manager or similar construction firm which is familiar in

147 the negotiation and administration of project labor agreements to manage and oversee the
148 construction of the project, including the development and implementation of labor relations
149 policies for the project, and to instruct such general contractor, project manager or other
150 construction firm to negotiate a mutually agreeable project labor agreement covering the above
151 described work.

152 SECTION 11. This act shall take effect upon its passage.