

SENATE No. 1446

The Commonwealth of Massachusetts

PRESENTED BY:

Marc R. Pacheco

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 authorizing a governmental body to enter into contracts for the inspection, maintenance, repair or modification of water storage facilities.

PETITION OF:

NAME:

Marc R. Pacheco

DISTRICT/ADDRESS:

First Plymouth and Bristol

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, wastewater district,
3 authority or state agency located within the commonwealth; provided further that the term "governmental
4 body" shall not mean the Massachusetts Water Resources Authority (MWRA).

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

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

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

17 The request for proposals for such contract shall specify the method for comparing proposals to
18 determine the proposal offering the most advantageous proposal to a governmental body including, but

19 not limited to, all capital financing, operating and maintenance costs, warranty requirements, indemnity
20 and security, experience, and technical competence. If a contract is awarded to an offeror who submitted
21 the most advantageous proposal, but who did not offer the lowest overall cost, the governmental body
22 shall explain the reason for the award in writing.

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

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

41 Section 62. The chief procurement officer of a governmental body shall solicit proposals through a
42 request for proposals which shall include those items in paragraphs (1) and (2) of subsection (b) of section
43 six of chapter thirty B and proposed key contractual terms and conditions to be incorporated into the
44 contract, some of which may be deemed mandatory or non-negotiable; provided, however, that the
45 request for proposals may request proposals or offer options for fulfillment of other contractual terms, and
46 such other matters as may be determined by the governmental body.

47 Section 63. The chief procurement officer of a governmental body shall make a preliminary
48 determination of the most advantageous proposal from a responsible and responsive offeror taking into
49 consideration price, estimated life-cycle costs, allocation of risks and responsibilities and other evaluation
50 criteria set forth in the request for proposal. The chief procurement officer may negotiate all terms of the
51 contract not deemed mandatory or non-negotiable with such offeror. If, after negotiation with such
52 offeror, the chief procurement officer determines that it is in the governmental body's best interests to

53 terminate negotiations with said offeror, the chief procurement officer shall notify said offeror in writing
54 that negotiations are terminated and shall enter into negotiations with the next most advantageous
55 proposal from a responsible and responsive offeror taking into consideration price, estimated life cycle
56 costs, allocation of risks and responsibilities and other evaluation criteria set forth in the request for
57 proposals, and may negotiate all terms of the contract not deemed mandatory or non-negotiable with such
58 offeror. The chief procurement officer shall award the contract to the most advantageous proposal from a
59 responsible and responsive offeror taking into consideration price, estimated life cycle costs, allocations
60 of risks and responsibilities and other evaluation criteria set forth in the request for proposal and the terms
61 of the negotiated contract. Subject to the approval of the governmental body, the chief procurement
62 officer shall award the contract by written notice to the selected offeror within the time for acceptance
63 specified in the request for proposals. Such award shall be subject to this section and sections sixty to
64 sixty-two and sections sixty-four to seventy-one, inclusive. The parties may extend the time for
65 acceptance by mutual agreement.

66 Section 64. Reserved.

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

71 Section 66. Notwithstanding the provisions of any general or special law or regulation to the contrary,
72 the Department of Environmental Protection may issue project approval certificates with respect to the
73 contract procured by a governmental body for water storage facilities. Any design and construction
74 services included in such contract and any design and construction services procured in accordance with
75 the provisions of this act shall not be precluded from eligibility for assistance under the Massachusetts
76 Water Pollution Abatement Trust established by section two of the General Laws chapter twenty-nine C.

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

83 Section 68. An action, suit or proceeding contesting the validity or enforceability of a contract or
84 contracts awarded pursuant to this act, or the compliance by a governmental body with the procedures
85 relating to such award, shall be commenced within thirty days after publication of notice of such award by

86 the chief procurement officer in a newspaper of general circulation according to the location of the
87 government body.

88 Section 69.Reserved.

89 Section 70. It shall be a mandatory requirement that no less than ninety days prior to the
90 commencement of any procurement process undertaken pursuant to the provisions of sections sixty-one to
91 seventy-one for the design, construction, inspection, maintenance, , or modification for work on the water
92 storage facilities, that the governmental body shall make public notification of said process by the
93 following means:

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

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