

**HOUSE . . . . . No.**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**John W. Scibak**

*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 relative to the procurement of wastewater treatment and disposal services.

PETITION OF:

NAME:

John W. Scibak

DISTRICT/ADDRESS:

2nd Hampshire

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 3216 OF 2007-2008.]

## The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine

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AN ACT RELATIVE TO THE PROCUREMENT OF WASTEWATER TREATMENT AND  
DISPOSAL SERVICES.

*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. Notwithstanding the provisions of any general or special law to the  
2 contrary, a city, town, or district which accepts this chapter may enter into contracts for the lease  
3 or sale, operation and maintenance, financing, design and construction of modifications and  
4 installation of new equipment and systems at a wastewater treatment plant, sewers and pump  
5 stations to ensure adequate services and to ensure the ability of said wastewater treatment plant,  
6 sewers and pump stations to operate in full compliance with all applicable requirements of  
7 federal, state and local laws; provided, however that such contracts shall not be subject to the  
8 competitive bid requirements set forth in sections 38A to 38O, inclusive, of chapter 7, section  
9 39M of chapter 30 or sections 44A to 44M, inclusive, of chapter 149 of the General Laws;  
10 provided further, that each such contract shall be awarded pursuant to the provisions of chapter

11 30B of the General Laws, except for clause (3) of subsection (b), clause (3) of subsection (e) and  
12 subsection (g) of section 6 and sections 13 and 16.

13

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

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20 SECTION 2. (a) Notwithstanding the provisions of any general or special law to the contrary,  
21 contracts awarded pursuant to section 1 may provide for a term not exceeding 20 years and an  
22 option for renewal or extension of operations and maintenance services for one additional term  
23 not exceeding five years. The renewal or extension shall be at the sole discretion of the city or  
24 town in accordance with the original contract terms and conditions or contract terms and  
25 conditions more favorable to and acceptable to said city or town. Contracts entered into pursuant  
26 to this act may provide that, subject to a majority vote of the town meeting, or the city or town  
27 council, said city or town shall not be exempt from liability for payment of the costs to finance,  
28 permit, design and construct modifications or install new equipment and systems at the  
29 wastewater treatment plant, sewers and pump stations necessary to ensure the ability of said  
30 wastewater treatment plant, sewers and pump stations to operate in full compliance with all  
31 applicable requirements of federal, state and local laws; provided, however, that such costs shall  
32 be amortized over a period that is no longer than the useful life of such modifications, equipment  
33 and systems. Said city or town's payment obligations for all operations and maintenance services

34 shall be conditioned on the contractor's performance of such services in accordance with all  
35 contractual terms.

36 (b) Contracts entered into pursuant to this act may provide for such activities as may be deemed  
37 necessary to carry out the purposes authorized herein including, but not limited to, equipment,  
38 facility or land sale or lease, equipment installation and replacement, performance testing and  
39 operation, studies, land sale or lease, equipment installation and replacement, performance  
40 testing and operation, studies, design and engineering work, construction work, ordinary repairs  
41 and maintenance and the furnishing of all related material, supplies and services required for the  
42 wastewater treatment plant, sewers and pump stations and the management, operation,  
43 maintenance and repair of and improvements to said city or town's wastewater treatment plant,  
44 sewers and related pump stations.

45

46 SECTION 3. The city or town, acting through its Chief Procurement Officer established pursuant  
47 to chapter 30B, shall solicit proposals through requests for proposals which shall include those  
48 items in paragraphs (1) and (2) of subsection (b) of section 6 of chapter 30B of the General Laws  
49 and proposed key contractual terms and conditions to be incorporated into the contract, some of  
50 which may be deemed mandatory or nonnegotiable; provided, however, that the requests for  
51 proposals may request proposals or offer options for fulfillment of other contractual terms and  
52 such other matters as may be determined by said city or town.

53

54 SECTION 4. The Chief Procurement Officer shall make a preliminary determination of the most  
55 advantageous proposal from a responsible and responsive offeror taking into consideration price,

56 estimated life-cycle costs and other evaluation criteria set forth in the request for proposals. Said  
57 Chief Procurement Officer may negotiate all terms of the contract not deemed mandatory or non-  
58 negotiable with such offeror. If, after negotiation with such offeror, said Chief Procurement  
59 Officer determines that it is in said city or town's best interests, said Chief Procurement Officer  
60 may determine the next most advantageous proposal from a responsible and responsive offeror  
61 taking into consideration price, estimated life-cycle costs and other evaluation criteria set forth in  
62 the request for proposals and may negotiate all terms of the contract not deemed mandatory or  
63 nonnegotiable with such offeror. Said Chief Procurement Officer shall award the contract to the  
64 most advantageous proposal from a responsible and responsive offeror taking into consideration  
65 price, estimated life-cycle costs, the evaluation criteria set forth in the request for proposals and  
66 the terms of the negotiated contract. Subject to the approval of the board or officer authorized to  
67 enter into contracts on behalf of the city or town and, with respect to any contract in excess of  
68 five years, the authorization of the town meeting or the city or town council, said Chief  
69 Procurement Officer shall award the contract by written notice to the selected offeror within the  
70 time for acceptance specified in the request for proposals. Such award shall be subject to  
71 sections 5 and 6. The parties may extend the time for acceptance by mutual agreement.

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73 SECTION 5. Notwithstanding any other provisions of this act, it shall be a mandatory term of  
74 any request for proposals issued by a city or town which already operates a wastewater treatment  
75 plant staffed by municipal employees and of any contract entered into by said city or town with  
76 any party regarding the subject matter of this act that any party which has entered into a contract  
77 pursuant to the terms of this act with said city or town shall require, in order to maintain stable  
78 and productive labor relations and to avoid interruption of the operation of the plant and to

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

102 SECTION 6. Subject to the provisions of this act, any contract awarded hereunder shall be  
103 subject to such terms and conditions as the city or town shall determine to be in its best interests.  
104 Any such contract shall provide that, prior to the construction of modifications or installation of  
105 equipment and systems, said city or town shall cause a qualified wastewater engineer to  
106 independently review and approve plans and specifications for such modifications, equipment  
107 and systems. Such contract shall further provide that prior to said city or town's acceptance of  
108 any modifications, equipment or systems, including work undertaken pursuant to section 8 and  
109 estimated to cost more than \$100,000, said city or town shall cause a qualified wastewater  
110 engineer to inspect such modifications, equipment and systems and certify that the construction  
111 or installation has been completed in accordance with the approved plans and specifications.

112

113 SECTION 7. Notwithstanding the provisions of any general or special law or rule or regulation  
114 to the contrary, the department of environmental protection may issue project approval  
115 certificates with respect to a contract procured pursuant to this chapter for wastewater treatment  
116 facility improvements, and any design and construction services included in such contract shall  
117 be eligible for assistance under the water pollution abatement trust established by section 2 of  
118 chapter 29C of the General Laws.

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120 SECTION 8. The provisions of any general or special law or rule or regulation relating to the  
121 advertising, bidding or award of contracts, to the procurement of services or to the construction  
122 and design of improvements shall not be applicable to any selected offeror which is awarded a  
123 contract pursuant to this act, except as provided in this section. The construction of any new  
124 capital improvement or any renovation, modernization, installation or replacement work

125 estimated to cost more than \$100,000, not specifically included in the initial contract for the  
126 lease or sale, operation and maintenance, design and construction of the wastewater treatment  
127 plant, sewers and pump stations, shall be procured on the basis of advertised sealed bids;  
128 provided, however, that bids need not be solicited if the contractor causes such construction,  
129 renovation, modernization, installation or replacement work to be completed without direct or  
130 indirect reimbursement from the city or town or other adjustment to the fees or costs paid by said  
131 city or town including, but not limited to, any adjustment to sewer rates paid by said city or  
132 town's residents or businesses. Bids shall be based on detailed plans and specifications and the  
133 contract shall be awarded to the lowest responsible and eligible bidder. The contractor may act as  
134 an agent of said city or town in the solicitation of bids for the construction of any new capital  
135 improvement or for any renovation, modernization, installation or replacement work pursuant to  
136 this section; provided, however, that said city or town shall cause a qualified wastewater  
137 engineer to independently assess the need for such capital improvement, renovation,  
138 modernization, installation or replacement work and to review and approve the contractor's  
139 proposed plans and specifications prior to advertising for bids. Based on the recommendations of  
140 the qualified wastewater engineer, said city or town may approve, modify, or reject the  
141 contractor's proposed plans and specifications. Any contract awarded pursuant to this act shall  
142 provide that, in the event that said city or town does not approve the contractor's proposed plans  
143 and specifications pursuant to this section, said city or town or the contractor may terminate the  
144 contract under the terms and conditions of such contract.

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146 SECTION 9. All contracts or subcontracts for new construction, renovation, modernization,  
147 improvement or capital improvements to the city or town's wastewater treatment plant including,



148 but not limited to, all treatment facilities and pump stations shall be awarded only to persons or  
149 entities whose bids or proposals are subject to such persons or entities being signatory to a  
150 project labor agreement with the appropriate labor organizations which shall include an  
151 obligation for such labor organizations and its constituent members not to strike with respect to  
152 the work on such construction project and which shall also establish uniform work rules and  
153 schedules for the project. Such project agreement shall be entered into in order to facilitate the  
154 timely and efficient completion of the construction of such improvements and to make available  
155 a ready and adequate supply of highly trained, skilled craft workers who shall provide a  
156 negotiated commitment to assure labor stability and labor peace over the life of this project. The  
157 applicable entity responsible for any construction, renovation, modernization, improvement or  
158 capital improvement to said city or town's wastewater treatment plant and pump stations shall  
159 designate a general contractor, project manager or similar construction firm which is familiar in  
160 the negotiation and administration of project labor agreements to manage and oversee the  
161 construction of the project, including the development and implementation of labor relations  
162 policies for the project, and to instruct such general contractor, project manager or other  
163 construction firm to negotiate a mutually agreeable project labor agreement covering the above  
164 described work.

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