

**SENATE . . . . . No.**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Mr. 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 operation, maintenance, operation and maintenance, lease or sale and modification of water storage facilities , water treatment facilities and wastewater treatment facilities, collection and distribution systems, sewers and pump stations.

PETITION OF:

NAME:

Mr. Pacheco

DISTRICT/ADDRESS:

First Plymouth and Bristol

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. S01896 OF 2007-2008.]

**The Commonwealth of Massachusetts**

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**In the Year Two Thousand and Nine**

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AN ACT AUTHORIZING A GOVERNMENTAL BODY TO ENTER INTO CONTRACTS FOR THE OPERATION, MAINTENANCE, OPERATION AND MAINTENANCE, LEASE OR SALE AND MODIFICATION OF WATER STORAGE FACILITIES, WATER TREATMENT FACILITIES AND WASTEWATER TREATMENT FACILITIES, COLLECTION AND DISTRIBUTION SYSTEMS, SEWERS AND PUMP STATIONS

*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. AUTHORIZING A GOVERNMENTAL BODY TO ENTER INTO CONTRACTS FOR THE  
2 OPERATION, MAINTENANCE, OPERATION AND MAINTENANCE, LEASE OR SALE AND MODIFICATION OF  
3 WATER STORAGE FACILITIES, WATER TREATMENT FACILITIES AND WASTEWATER TREATMENT  
4 FACILITIES, COLLECTION AND DISTRIBUTION SYSTEMS, SEWERS AND PUMP STATIONS.

5 For the purposes of this act, the term "governmental body" shall be defined as any city, town, county,  
6 water district, wastewater district, authority or state agency located within the commonwealth; provided  
7 further that the term "governmental body" shall not mean the Massachusetts Water Resources Authority  
8 (MWRA).

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

11           Section 60. Notwithstanding any general or special law to the contrary, any governmental body that  
12 accepts the provisions of this section and sections sixty-one through sixty-eight, inclusive, may in  
13 accordance with the provisions of this chapter,

14 enter into a contract for the lease or sale, operation, maintenance or operation and maintenance, financing,  
15 permitting, design and construction of modifications, and new facilities, and installation of new  
16 equipment and systems, or any combination thereof, necessary for water storage facilities, water  
17 treatment facilities, wastewater treatment facilities, septage treatment facilities, sewer and pump stations,  
18 collection and distribution systems, to ensure adequate services and to ensure the ability of water storage  
19 facilities, water treatment facilities, septage treatment facilities, wastewater treatment facilities, sewers  
20 and pump stations, collection and distribution systems to operate in full compliance with all applicable  
21 requirements of federal, state and local law. Said contract shall be awarded pursuant to the provisions of  
22 chapter thirty B except for paragraph (3) of subsection (b), paragraph (3) of subsection (e), subsection (g)  
23 of section six and sections thirteen and sixteen.

24 The request for proposals for such contract shall specify the method for comparing proposals to  
25 determine the proposal offering the most advantageous proposal to a governmental body including, but  
26 not limited to, all capital financing, operating and maintenance costs, warranty requirements, indemnity  
27 and security, experience and technical competence. If a contract is awarded to an offeror who  
28 submitted the most advantageous proposal, but who did not offer the lowest overall cost, the  
29 governmental body shall explain the reason for the award in writing. The contract shall provide that all  
30 necessary construction of modifications, and new facilities, and installation of new equipment and  
31 systems, performed after the initial capital repairs, alterations or improvements that are awarded pursuant  
32 to this section, which are estimated to cost more than two hundred and fifty thousand dollars shall be  
33 awarded according to the provisions of chapter one hundred forty-nine, sections 44A, 44B, 44C, 44E ( but  
34 not including modular buildings), 44F, 44G and 44H, if the contractor employs a general contractor, or  
35 chapter one hundred forty-nine, sections 44B, 44C, 44E, 44F, 44G, and 44H, if the contractor acts as a  
36 construction manager and contracts with subcontractors to perform the construction work. The  
37 governmental body may, with advice from the contractor and the engineer employed pursuant to section  
38 67, pre-qualify general contractors and subcontractors who may submit bids and sub-bids for each such  
39 construction contract. The specifications for such work shall contain certification by the qualified water  
40 and wastewater engineer employed pursuant to this section that he has independently assessed the need  
41 for such capital improvements, renovation, modernization, installation or replacement work and that he  
42 has reviewed and approved the contractor's proposed plans and specifications prior to advertising for bids  
43 and sub-bids.

44 Section 61. (a) Notwithstanding the provisions of any general or special law to the contrary, a contract  
45 or contracts awarded pursuant to section sixty may provide for a term, not exceeding twenty years, and an  
46 option for renewal or extension of operation, maintenance or operation and maintenance services for one  
47 additional term not exceeding ten years in accordance with the terms of the original contract. A contract  
48 entered into pursuant to section sixty to seventy-one, inclusive, may provide that the governmental body

49 shall not be exempt from liability for payment of the costs to operate, maintain, finance, permit, design  
50 and construct, modify or install new equipment and systems at any water storage facilities, water  
51 treatment facilities, wastewater treatment facilities, septage treatment facilities, collection and distribution  
52 facilities, sewers and pump stations necessary to ensure the ability of said facilities, to operate in full  
53 compliance with all applicable requirements of federal, state and local law, provided that such costs shall  
54 be amortized over a period that is no longer than the useful life of said modifications, equipment and  
55 systems. A governmental body's payment obligation for all operation, maintenance or operation and  
56 maintenance services shall be conditioned on the contractor's performance of said services in accordance  
57 with all contractual terms.

58 (b) Any contract entered into pursuant to sections sixty to seventy-one, inclusive, may provide for  
59 such activities deemed necessary to carry out the purposes authorized herein, including, but not limited to,  
60 financing, facility or land sale or lease, equipment installation and replacement, performance testing and  
61 operation, studies, permitting, design and engineering work, construction work, ordinary repairs and  
62 maintenance, and the furnishing of all related material, supplies and services required for the water  
63 storage facilities, water treatment facilities and wastewater treatment facilities, septage treatment  
64 facilities, collection and distribution systems, sewer and pump stations and the management, construction,  
65 operation, maintenance and repair of and improvements to said facilities.

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

72 Section 63. The chief procurement officer of a governmental body shall make a preliminary  
73 determination of the most advantageous proposal from a responsible and responsive offeror taking into  
74 consideration price, estimated life-cycle costs, allocation of risks and responsibilities and other  
75 evaluation criteria set forth in the request for proposal. The chief procurement officer may negotiate all  
76 terms of the contract not deemed mandatory or non-negotiable with such offeror. If, after negotiation with  
77 such offeror, the chief procurement officer determines that it is in the governmental body's best interests  
78 to terminate negotiations with said offeror, the chief procurement officer shall notify said offeror in  
79 writing that negotiations are terminated and shall enter into negotiations with the next most advantageous  
80 proposal from a responsible and responsive offeror taking into consideration price, estimated life cycle  
81 costs, allocation of risks and responsibilities and other evaluation criteria set forth in the request for  
82 proposals, and may negotiate all terms of the contract not deemed mandatory or non-negotiable with such

83 offeror. The chief procurement officer shall award the contract to the most advantageous proposal from a  
84 responsible and responsive offeror taking into consideration price, estimated life cycle costs, allocations  
85 of risks and responsibilities and other evaluation criteria set forth in the request for proposal and the terms  
86 of the negotiated contract. Subject to the approval of the governmental body, the chief procurement  
87 officer shall award the contract by written notice to the selected offeror within the time for acceptance  
88 specified in the request for proposals. Such award shall be subject to this section and sections sixty to  
89 sixty-two and sections sixty-four to seventy-one, inclusive. The parties may extend the time for  
90 acceptance by mutual agreement.

91 Section 64. Notwithstanding any other provisions of this act, it shall be a mandatory term of any  
92 request for proposal issued by a governmental body and of any contract entered into by a governmental  
93 body with any party for operations and maintenance that any party that has entered into a contract pursuant  
94 to the terms of this act with a governmental body, shall require, in order to maintain stable and productive  
95 labor relations and to avoid interruption of the operation of the facility and to preserve the health, safety  
96 and environmental conditions of residents

97 of a city or town and surrounding communities, any and all employees working on the operation and  
98 maintenance of the water storage and treatment facilities, wastewater treatment facilities, septage  
99 treatment facilities, collection and distribution facilities, sewers and pump stations that exist at the time of  
100 execution of the contract entered into pursuant to the provisions of this act, be offered employment by  
101 any party entering into a contract with a governmental body for the operation and maintenance of said  
102 facilities, and furthermore, said party entering into a contract with a governmental body, shall adopt all  
103 terms and conditions of employment provided by the last applicable labor agreement negotiated between  
104 the labor organization representing said employees and the applicable employer who has most recently  
105 employed said employees prior to entering into any contract pursuant to this section, and sections sixty to  
106 sixty-three and sections sixty-five to seventy-one, inclusive. Moreover, said parties shall furthermore  
107 agree to meet its legal obligations with regard to any labor organization representing employees engaged  
108 in the operation and maintenance of the water treatment facilities, wastewater treatment facilities,  
109 septage treatment facilities, collection and distribution facilities, sewers and pump stations described  
110 herein. Notwithstanding any other provisions of sections sixty to seventy-one, inclusive, any proposal or  
111 contract for this purpose and not complying with the above terms, shall be disqualified from  
112 consideration. The provisions of this section shall not apply where one or more full-time public  
113 employees are not displaced from employment as a result of the contract entered into pursuant to Sections  
114 60-71. The provisions of this section shall not apply to water storage facilities.

115 Section 65. Subject to the provisions of this section and section sixty to sixty-four and sections sixty-  
116 six to seventy-one inclusive, any contract awarded pursuant thereto shall be subject to such terms and

117 conditions as the governmental city or town shall determine to be in the best interests of said  
118 governmental body. Any such contract shall provide that prior to the construction of modifications or  
119 installation of equipment and systems for water treatment facilities, wastewater treatment facilities,  
120 septage treatment facilities, collection and distribution facilities, sewers and pump stations the  
121 governmental body shall cause a qualified water and wastewater engineer to independently review and  
122 approve plans and specifications for said modifications, equipment or systems.

123 Section 66. Notwithstanding the provisions of any general or special law or regulation to the contrary,  
124 the Department of Environmental Protection may issue project approval certificates with respect to the  
125 contract procured by a governmental body for water storage facilities, water treatment facilities,  
126 wastewater treatment facilities, septage treatment facilities, collection and distribution systems, sewers  
127 and pump stations. Any design and construction services included in such contract and any design and  
128 construction services procured in accordance with the provisions of this act shall not be precluded from  
129 eligibility for assistance under the Massachusetts Water Pollution Abatement Trust established by section  
130 two of the chapter twenty-nine C.

131 Section 67. The provisions of any general or special law or special act or regulation relating to the  
132 advertising, bidding or award of contracts, the procurement of services or to the construction and design  
133 of improvements, shall not be applicable to any selected offeror which is awarded a contract pursuant to  
134 sections sixty to seventy-one, inclusive, except as provided in this section, provided further, however, that  
135 the provisions of sections twenty-six to twenty-seven F, inclusive, and section twenty-nine of chapter one  
136 hundred forty-nine shall apply. Any such contract which requires the construction of any new capital  
137 improvements for any renovation, modernization, installation or replacement work estimated by an  
138 engineer experienced and qualified for the design and inspection of the construction of such work to cost  
139 more than two hundred and fifty thousand dollars shall require the contractor to prepare complete plans  
140 and specifications for the work, take bids from general contractors and subcontractors or to act as  
141 construction manager and take sub-bids from subcontractors and to award contracts and subcontracts for  
142 the work as provided in section sixty. Any contract or contracts awarded pursuant to this section and  
143 sections sixty to sixty-six, and sixty-eight through seventy-one, inclusive, shall provide that in the event  
144 that the governmental body does not approve the contractor's proposed plans and specifications pursuant  
145 to this section, the governmental body or the contractor may terminate said contract under the terms and  
146 conditions of said contract. The provisions of this section shall not apply to water treatment facilities.

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

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

152 Section 69. Notwithstanding the provisions of chapter thirty-two of the General Laws or any other  
153 general or special law to the contrary, any governmental body which adopts the provisions of this act shall  
154 provide for an early retirement incentive program as set forth for any employees working on the operation  
155 and maintenance of the watertreatment facilities, wastewater treatment facilities, septage treatment  
156 facilities, sewer and pump stations, collection and distribution systems, who (i) shall be an employee and  
157 an active member-in-service of the local retirement system established under said chapter thirty-two or  
158 any predecessor system on the date that the city or town enters into said contract, (ii) shall be eligible to  
159 receive a superannuation retirement allowance in accordance with the provisions of subdivision (1) of  
160 section five of said chapter thirty-two or subdivision (1) of section ten of said chapter thirty-two upon the  
161 effective retirement date specified in a written application to the local retirement board, and (iii) shall  
162 have filed a written application to retire for superannuation as of the date which shall be specified in such  
163 application. The early retirement incentive program shall be administered by the local retirement board,  
164 which shall be authorized to promulgate regulations necessary to implement the provisions of said  
165 program. Notwithstanding the provisions of chapter thirty-two of the General Laws to the contrary, the  
166 normal yearly amount of the retirement allowance for an eligible employee who is employed by the city  
167 or town and who has paid the full amount of regular deductions on the total amount of regular  
168 compensation so determined under paragraph (a) of subdivision (2) of section five of said chapter thirty-  
169 two shall be based on the average annual rate of regular compensation as determined under said paragraph  
170 (a) and shall be computed according to the table contained in said paragraph (a) based on the age of such  
171 member and his number of years and full months of creditable service at the time of his retirement  
172 increased by up to five years of age or by up to five years of creditable service or by a combination of  
173 additional years of age and service, the sum of which shall not be greater than five. For the purpose of  
174 this act, words shall have the same meaning as in said chapter thirty-two of the General Laws unless  
175 otherwise expressly provided or unless the context clearly requires otherwise. An employee who retires  
176 and receives an additional benefit in accordance with the provisions of this act shall be deemed to be  
177 retired for superannuation under the provisions of said chapter thirty-two and shall be subject to any and  
178 all provisions of said chapter thirty-two. The total normal yearly amount of the retirement allowance, as  
179 determined in accordance with the provisions of section five of said chapter thirty-two of the General  
180 Laws, of any employee who retires and receives an additional benefit under the retirement incentive  
181 program in accordance with the provisions of this act shall not exceed such percentage of the average  
182 annual rate of his regular compensation received during any period of three consecutive years of  
183 creditable service for which the rate of compensation was the highest or of the average annual rate for his  
184 regular compensation received during the periods, whether or not consecutive, constituting his last three

185 years of creditable service preceding retirement, whichever is greater. The local retirement board shall  
186 prepare a funding schedule which shall reflect the costs and the actuarial liabilities attributable to the  
187 additional benefits payable under the retirement incentive program in accordance with the provisions of  
188 this act and such schedule shall be designed to reduce the additional pension liability attributable to such  
189 costs and liabilities to zero on or before June thirtieth, two thousand and seventeen; provided however,  
190 that said board shall triennially update such schedule until said June thirtieth, two thousand and  
191 seventeen. In each of the fiscal years until the actuarial liability determined under this section shall be  
192 reduced to zero, it shall be deemed an obligation of the county to fund such liability and there shall be  
193 appropriated in each such fiscal year the amount required by the funding schedule and the updates thereto.  
194 The provisions of this section shall not apply where one or more full-time public employees are not  
195 displaced from employment as a result of the contract entered into pursuant to Sections 60-71.

196 Section 70. It shall be a mandatory requirement that no less than ninety days prior to the  
197 commencement of any procurement process undertaken pursuant to the provisions of sections sixty-one to  
198 seventy-one for the design, construction, operation, maintenance or operation and maintenance, leasing,  
199 sale, or modification for work on the water treatment facilities, wastewater treatment facilities, septage  
200 treatment facilities, sewer and pump stations, collection and distribution systems, that the governmental  
201 body shall make public notification of said process by the following means:

- 202 1. Publish an appropriate notice to the Central Register, published by the Secretary of State.
- 203 2. Inform the collective bargaining agent representing employees of said facility (ies) or station(s) .

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205 Section 71. Notwithstanding any general or special law to the contrary, any contract issued pursuant  
206 to this section or pursuant to a contract previously awarded under this section that provides for the  
207 construction, reconstruction, alteration or modification of water treatment facilities, wastewater treatment  
208 facilities, septage treatment facilities, collection and distribution systems, sewers and pump stations shall  
209 include, as a minimum, the following language:

- 210 (1) A private entity engaged in a construction, development, renovation, remodeling, reconstruction,  
211 rehabilitation or redevelopment project pursuant to a contract awarded under this act shall properly  
212 classify individuals employed on the project and shall comply with all laws relative to workers'  
213 compensation, unemployment insurance, social security taxes and income taxes with respect to those  
214 employees.

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216 (2) All construction contractors or subcontractors engaged by any entity on any project which is  
217 performed pursuant to a contract awarded under this act shall have and maintain participation in a bona  
218 fide apprentice training program as defined by M.G.L. c.23, §11H and 11I for each category of work  
219 represented in their workforce that is approved by the Division of Apprentice Training of the Department  
220 of Labor and Workforce Development and abide by the apprentice to journeyman ratio for each trade.

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222 (3) All construction contractors engaged by any entity on any project that is performed pursuant to a  
223 contract awarded under this act shall furnish, to the awarding authority, documentation showing all  
224 employees are employed on the project have hospitalization and medical benefits that meet the minimum  
225 requirements of the Connector Board established by Chapter 58 of the Acts of 2006.

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231 Section 72. Notwithstanding any general or special law to the contrary, sections sixty through seventy-  
232 one inclusive of this chapter may be accepted, in the case of a city with a Plan D or Plan E charter by the  
233 city council, with the approval of the mayor; in the case of a town with a town council, by the town  
234 council; in the case of all other towns, by the Board of Selectmen, in the case of an existing water and  
235 sewer commission, by its board of commissioners.

236 Section 3. This act will take effect upon passage.

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