SENATE DOCKET, NO. 1306 FILED ON: 1/18/2013

SENATE . . . . . No. 1536

The Commonwealth of Massachusetts

PRESENTED BY:

Bruce E. Tarr

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:

An Act allowing cities, towns and districts to procure contracts for the design, construction, financing and operation of wastewater and water treatment facilities.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Bruce E. Tarr	*First Essex and Middlesex*
Michael R. Knapik	*Second Hampden and Hampshire*

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By Mr. Tarr, a petition (accompanied by bill, Senate, No. 1536) of Bruce E. Tarr and Michael R. Knapik for legislation to procure contracts for the design, construction, financing and operation of wastewater and water treatment facilities. State Administration and Regulatory Oversight.

The Commonwealth of Massachusetts

An Act allowing cities, towns and districts to procure contracts for the design, construction, financing and operation of wastewater and water treatment facilities.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 149A of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting at the end thereof the following new section:-

Section 22. Design build contracts for wastewater and water treatment facilities

A city, town or district which accepts the provisions of this chapter may enter into contracts for the lease or sale, operation and maintenance, financing, design and construction of modifications and installation of new equipment and systems at a wastewater treatment plant, sewers and pump stations to ensure adequate services and to ensure the ability of said wastewater treatment plant, sewers and pump stations to operate in full compliance with all applicable requirements of federal, state and local laws; provided, however that such contracts shall not be subject to the competitive bid requirements set forth in sections 38A to 38O, inclusive, of chapter 7, section 39M of chapter 30 or sections 44A to 44M, inclusive, of chapter 149 of the General Laws; provided further, that each such contract shall be awarded pursuant to the provisions of chapter 30B of the General Laws, except for clause (3) of subsection (b), clause (3) of subsection (e) and subsection (g) of section 6 and sections 13 and 16.

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

SECTION 2. (a) Notwithstanding the provisions of any general or special law to the contrary, contracts awarded pursuant to section 1 may provide for a term not exceeding 20 years and an option for renewal or extension of operations and maintenance services for one additional

term not exceeding five years. The renewal or extension shall be at the sole discretion of the city or town in accordance with the original contract terms and conditions or contract terms and conditions more favorable to and acceptable to said city or town. Contracts entered into pursuant to this act may provide that, subject to a majority vote of the town meeting, or the city or town council, said city or town shall not be exempt from liability for payment of the costs to finance, permit, design and construct modifications or install new equipment and systems at the wastewater treatment plant, sewers and pump stations necessary to ensure the ability of said wastewater treatment plant, sewers and pump stations to operate in full compliance with all applicable requirements of federal, state and local laws; provided, however, that such costs shall be amortized over a period that is no longer than the useful life of such modifications, equipment and systems. Said city or town's payment obligations for all operations and maintenance services shall be conditioned on the contractor's performance of such services in accordance with all contractual terms.

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

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

SECTION 4. The Chief Procurement Officer shall make a preliminary determination of the most advantageous proposal from a responsible and responsive offeror taking into consideration price, estimated life-cycle costs and other evaluation criteria set forth in the request for proposals. Said Chief Procurement Officer may negotiate all terms of the contract not deemed mandatory or non-negotiable with such offeror. If, after negotiation with such offeror, said Chief Procurement Officer determines that it is in said city or town's best interests, said Chief Procurement Officer may determine the next most advantageous proposal from a responsible and responsive offeror taking into consideration price, estimated life-cycle costs and other evaluation criteria set forth in the request for proposals and may negotiate all terms of the con- tract not deemed mandatory or nonnegotiable with such offeror. Said Chief Procurement

Officer shall award the contract to the most advantageous proposal from a responsible and responsive offeror taking into consideration price, estimated life-cycle costs, the evaluation criteria set forth in the request for proposals and the terms of the negotiated contract. Subject to the approval of the board or officer authorized to enter into contracts on behalf of the city or town and, with respect to any contract in excess of five years, the authorization of the town meeting or the city or town council, said Chief Procurement Officer shall award the contract by written notice to the selected offeror within the time for acceptance specified in the request for proposals. Such award shall be subject to sections 5 and 6. The parties may extend the time for acceptance by mutual agreement.

SECTION 5. Notwithstanding any other provisions of this act, it shall be a mandatory term of any request for proposals issued by a city or town which already operates a wastewater treatment plant staffed by municipal employees and of any contract entered into by said city or town with any party regarding the subject matter of this act that any party which has entered into a contract pursuant to the terms of this act with said city or town shall require, in order to maintain stable and productive labor relations and to avoid interruption of the operation of the plant and to preserve the health, safety and environmental conditions of residents of said city or town and surrounding communities, that all employees working on the operation and maintenance of the wastewater treatment plant, sewers and pump stations be offered employment by any party entering into a contract with said city or town for the operation and maintenance of said facilities and that any such party entering into a contract with said city or town, shall adopt all terms and conditions of employment provided by the last applicable labor agreement negotiated between the labor organization representing said employees and the applicable employer who has most recently employed said employees prior to entering into any contract pursuant to this act; provided, however, that any party entering into such contract with said city or town pursuant to this act shall pay all of said employees not less than the sum of applicable wages paid to said employees by the previous employer. Any such party entering into such contract with said city or town shall negotiate a successor agreement with the last applicable labor organization representing said employees prior to the expiration of the existing contract. Such parties shall agree to meet its legal obligations with regard to any labor organization representing employees engaged in the operation and maintenance of the wastewater treatment plant, sewer, and pump stations described herein. Notwithstanding any general or special law to the contrary, any party entering into such contract with said city or town shall provide all employees of said city or town working on the operation and maintenance of the wastewater treatment plant, sewers and pump stations with all of the rights and benefits, including retirement and pension benefits, that are at least equal to said employees' benefits provided by said city or town. Notwithstanding any other provisions of this act, any proposal not complying with the above terms shall be disqualified from consideration.

SECTION 6. Subject to the provisions of this act, any contract awarded hereunder shall be subject to such terms and conditions as the city or town shall determine to be in its best

101 interests. Any such contract shall provide that, prior to the construction of modifications or
102 installation of equipment and systems, said city or town shall cause a qualified wastewater
103 engineer to independently review and approve plans and specifications for such modifications,
104 equipment and systems. Such contract shall further provide that prior to said city or town's
105 acceptance of any modifications, equipment or systems, including work undertaken pursuant to
106 section 8 and estimated to cost more than $100,000, said city or town shall cause a qualified
107 wastewater engineer to inspect such modifications, equipment and systems and certify that the
108 construction or installation has been completed in accordance with the approved plans and
109 specifications.

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

116 SECTION 8. The provisions of any general or special law or rule or regulation relating to
117 the advertising, bidding or award of contracts, to the procurement of services or to the
118 construction and design of improvements shall not be applicable to any selected offeror which is
119 awarded a contract pursuant to this act, except as provided in this section. The construction of
120 any new capital improvement or any renovation, modernization, installation or replacement work
121 estimated to cost more than $100,000, not specifically included in the initial contract for the
122 lease or sale, operation and maintenance, design and construction of the wastewater treatment
123 plant, sewers and pump stations, shall be procured on the basis of advertised sealed bids;
124 provided, however, that bids need not be solicited if the contractor causes such construction,
125 renovation, modernization, installation or replacement work to be completed without direct or
126 indirect reimbursement from the city or town or other adjustment to the fees or costs paid by said
127 city or town including, but not limited to, any adjustment to sewer rates paid by said city or
128 town's residents or businesses. Bids shall be based on detailed plans and specifications and the
129 contract shall be awarded to the lowest responsible and eligible bidder. The contractor may act as
130 an agent of said city or town in the solicitation of bids for the construction of any new capital
131 improvement or for any renovation, modernization, installation or replacement work pursuant to
132 this section; provided, however, that said city or town shall cause a qualified wastewater
133 engineer to independently assess the need for such capital improvement, renovation,
134 modernization, installation or replacement work and to review and approve the contractor's
135 proposed plans and specifications prior to advertising for bids. Based on the recommendations of
136 the qualified wastewater engineer, said city or town may approve, modify, or reject the
137 contractors proposed plans and specifications. Any contract awarded pursuant to this act shall
138 provide that, in the event that said city or town does not approve the contractor's proposed plans

139 and specifications pursuant to this section, said city or town or the contractor may terminate the
140 contract under the terms and conditions of such contract.