

# HOUSE . . . . . No. 3216

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By Mr. Kulik of Worthington, petition of Stephen Kulik and Denise Provost relative to the procurement of wastewater treatment and disposal services. State Administration and Regulatory Oversight.

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## The Commonwealth of Massachusetts

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In the Year Two Thousand and Seven.

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

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

1 SECTION 2. (a) Notwithstanding the provisions of any general or  
2 special law to the contrary, contracts awarded pursuant to Section 1  
3 may provide for a term not exceeding 20 years and an option for  
4 renewal or extension of operations and maintenance services for one  
5 additional term not exceeding five years. The renewal or extension  
6 shall be at the sole discretion of the city or town in accordance with  
7 the original contract terms and conditions or contract terms and con-  
8 ditions more favorable to and acceptable to said city or town. Con-  
9 tracts entered into pursuant to this act may provide that, subject to a  
10 majority vote of the town meeting, or the city or town council, said  
11 city or town shall not be exempt from liability for payment of the  
12 costs to finance, permit, design and construct modifications or install  
13 new equipment and systems at the wastewater treatment plant,  
14 sewers and pump stations necessary to ensure the ability of said  
15 wastewater treatment plant, sewers and pump stations to operate in  
16 full compliance with all applicable requirements of federal, state and  
17 local laws; provided, however, that such costs shall be amortized  
18 over a period that is no longer than the useful life of such modifica-  
19 tions, equipment and systems. Said city or town's payment obliga-  
20 tions for all operations and maintenance services shall be  
21 conditioned on the contractor's performance of such services in  
22 accordance with all contractual terms.

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

1 SECTION 3. The city or town, acting through its Chief Procure-  
2 ment Officer established pursuant to Chapter 30B, shall solicit pro-  
3 posals through requests for proposals which shall include those  
4 items in paragraphs (1) and (2) of subsection (b) of Section 6 of

5 Chapter 30B of the General Laws and proposed key contractual  
6 terms and conditions to be incorporated into the contract, some of  
7 which may be deemed mandatory or nonnegotiable; provided, how-  
8 ever, that the requests for proposals may request proposals or offer  
9 options for fulfillment of other contractual terms and such other mat-  
10 ters as may be determined by said city or town.

1 SECTION 4. The Chief Procurement Officer shall make a prelim-  
2 inary determination of the most advantageous proposal from a  
3 responsible and responsive offeror taking into consideration price,  
4 estimated life-cycle costs and other evaluation criteria set forth in the  
5 request for proposals. Said Chief Procurement Officer may negotiate  
6 all terms of the contract not deemed mandatory or non-negotiable  
7 with such offeror. If, after negotiation with such offeror, said Chief  
8 Procurement Officer determines that it is in said city or town's best  
9 interests, said Chief Procurement Officer may determine the next  
10 most advantageous proposal from a responsible and responsive  
11 offeror taking into consideration price, estimated life-cycle costs and  
12 other evaluation criteria set forth in the request for proposals and  
13 may negotiate all terms of the con- tract not deemed mandatory or  
14 nonnegotiable with such offeror. Said Chief Procurement Officer  
15 shall award the contract to the most advantageous proposal from a  
16 responsible and responsive offeror taking into consideration price,  
17 estimated life-cycle costs, the evaluation criteria set forth in the  
18 request for proposals and the terms of the negotiated contract. Sub-  
19 ject to the approval of the board or officer authorized to enter into  
20 contracts on behalf of the city or town and, with respect to any con-  
21 tract in excess of five years, the authorization of the town meeting or  
22 the city or town council, said Chief Procurement Officer shall award  
23 the contract by written notice to the selected offeror within the time  
24 for acceptance specified in the request for proposals. Such award  
25 shall be subject to Sections 5 and 6. The parties may extend the time  
26 for acceptance by mutual agreement.

1 SECTION 5. Notwithstanding any other provisions of this act, it  
2 shall be a mandatory term of any request for proposals issued by a  
3 city or town which already operates a wastewater treatment plant  
4 staffed by municipal employees and of any contract entered into by  
5 said city or town with any party regarding the subject matter of this

6 act that any party which has entered into a contract pursuant to the  
7 terms of this act with said city or town shall require, in order to  
8 maintain stable and productive labor relations and to avoid interrup-  
9 tion of the operation of the plant and to preserve the health, safety  
10 and environmental conditions of residents of said city or town and  
11 surrounding communities, that all employees working on the opera-  
12 tion and maintenance of the wastewater treatment plant, sewers and  
13 pump stations be offered employment by any party entering into a  
14 contract with said city or town for the operation and maintenance of  
15 said facilities and that any such party entering into a contract with  
16 said city or town, shall adopt all terms and conditions of employ-  
17 ment provided by the last applicable labor agreement negotiated  
18 between the labor organization representing said employees and the  
19 applicable employer who has most recently employed said  
20 employees prior to entering into any contract pursuant to this act;  
21 provided, however, that any party entering into such contract with  
22 said city or town pursuant to this act shall pay all of said employees  
23 not less than the sum of applicable wages paid to said employees by  
24 the previous employer. Any such party entering into such contract  
25 with said city or town shall negotiate a successor agreement with the  
26 last applicable labor organization representing said employees prior  
27 to the expiration of the existing contract. Such parties shall agree to  
28 meet its legal obligations with regard to any labor organization rep-  
29 resenting employees engaged in the operation and maintenance of  
30 the wastewater treatment plant, sewer, and pump stations described  
31 herein. Notwithstanding any general or special law to the contrary,  
32 any party entering into such contract with said city or town shall  
34 provide all employees of said city or town working on the operation  
35 and maintenance of the wastewater treatment plant, sewers and  
36 pump stations with all of the rights and benefits, including retire-  
37 ment and pension benefits, that are at least equal to said employees'  
38 benefits provided by said city or town. Notwithstanding any other  
39 provisions of this act, any proposal not complying with the above  
40 terms shall be disqualified from consideration.

1 SECTION 6. Subject to the provisions of this act, any contract  
2 awarded hereunder shall be subject to such terms and conditions as  
3 the city or town shall determine to be in its best interests. Any such  
4 contract shall provide that, prior to the construction of modifications

5 or installation of equipment and systems, said city or town shall  
6 cause a qualified wastewater engineer to independently review and  
7 approve plans and specifications for such modifications, equipment  
8 and systems. Such contract shall further provide that prior to said  
9 city or town's acceptance of any modifications, equipment or sys-  
10 tems, including work undertaken pursuant to Section 8 and esti-  
11 mated to cost more than \$100,000, said city or town shall cause a  
12 qualified wastewater engineer to inspect such modifications, equip-  
13 ment and systems and certify that the construction or installation has  
14 been completed in accordance with the approved plans and specifi-  
15 cations.

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

1 SECTION 8. The provisions of any general or special law or rule  
2 or regulation relating to the advertising, bidding or award of con-  
3 tracts, to the procurement of services or to the construction and  
4 design of improvements shall not be applicable to any selected  
5 offeror which is awarded a contract pursuant to this act, except as  
6 provided in this section. The construction of any new capital  
7 improvement or any renovation, modernization, installation or  
8 replacement work estimated to cost more than \$100,000, not specifi-  
9 cally included in the initial contract for the lease or sale, operation  
10 and maintenance, design and construction of the wastewater treat-  
11 ment plant, sewers and pump stations, shall be procured on the basis  
12 of advertised sealed bids; provided, however, that bids need not be  
13 solicited if the contractor causes such construction, renovation, mod-  
14 ernization, installation or replacement work to be completed without  
15 direct or indirect reimbursement from the city or town or other  
16 adjustment to the fees or costs paid by said city or town including,  
17 but not limited to, any adjustment to sewer rates paid by said city or  
18 town's residents or businesses. Bids shall be based on detailed plans

19 and specifications and the contract shall be awarded to the lowest  
20 responsible and eligible bidder. The contractor may act as an agent  
21 of said city or town in the solicitation of bids for the construction of  
22 any new capital improvement or for any renovation, modernization,  
23 installation or replacement work pursuant to this section; provided,  
24 however, that said city or town shall cause a qualified wastewater  
25 engineer to independently assess the need for such capital improve-  
26 ment, renovation, modernization, installation or replacement work  
27 and to review and approve the contractor's proposed plans and spec-  
28 ifications prior to advertising for bids. Based on the recommenda-  
29 tions of the qualified wastewater engineer, said city or town may  
30 approve, modify, or reject the contractors proposed plans and speci-  
31 fications. Any contract awarded pursuant to this act shall provide  
32 that, in the event that said city or town does not approve the contrac-  
33 tor's proposed plans and specifications pursuant to this section, said  
34 city or town or the contractor may terminate the contract under the  
35 terms and conditions of such contract.

1 SECTION 9. All contracts or subcontracts for new construction,  
2 renovation, modernization, improvement or capital improvements to  
3 the city or town's wastewater treatment plant including, but not lim-  
4 ited to, all treatment facilities and pump stations shall be awarded  
5 only to persons or entities whose bids or proposals are subject to  
6 such persons or entities being signatory to a project labor agreement  
7 with the appropriate labor organizations which shall include an  
8 obligation for such labor organizations and its constituent members  
9 not to strike with respect to the work on such construction project  
10 and which shall also establish uniform work rules and schedules for  
11 the project. Such project agreement shall be entered into in order to  
12 facilitate the timely and efficient completion of the construction of  
13 such improvements and to make available a ready and adequate  
14 supply of highly trained, skilled craft workers who shall provide a  
15 negotiated commitment to assure labor stability and labor peace over  
16 the life of this project. The applicable entity responsible for any con-  
17 struction, renovation, modernization, improvement or capital  
18 improvement to said city or town's wastewater treatment plant and  
19 pump stations shall designate a general contractor, project manager  
20 or similar construction firm which is familiar in the negotiation and  
21 administration of project labor agreements to manage and oversee

22 the construction of the project, including the development and  
23 implementation of labor relations policies for the project, and to  
24 instruct such general contractor, project manager or other construc-  
25 tion firm to negotiate a mutually agreeable project labor agreement  
26 covering the above described work.