

**SENATE. . . . . No. 2360**

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**The Commonwealth of Massachusetts**

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SENATE, July 15, 1996.

The committee on State Administration, to whom was referred the petition (accompanied by bill, Senate, No. 2348) of Marc R. Pacheco, Joan M. Menard and Philip Travis (with the approval of the mayor and the city council) for legislation to authorize the city of Taunton to enter into contracts for the operation and maintenance, lease or sale and modification of the wastewater treatment plant, sewers and pump stations, reports the accompanying bill (Senate, No. 2360).

For the committee,

MARC R. PACHECO.

## The Commonwealth of Massachusetts

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In the Year One Thousand Nine Hundred and Ninety-Six.

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AN ACT AUTHORIZING THE CITY OF TAUNTON TO ENTER INTO CONTRACTS FOR THE OPERATION AND MAINTENANCE, LEASE OR SALE AND MODIFICATION OF THE WASTEWATER TREATMENT PLANT, 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. Notwithstanding the provisions of any general or  
2 special law to the contrary, the city of Taunton may enter into a  
3 contract for the lease or sale, operation and maintenance,  
4 financing, design and construction of modifications, and installa-  
5 tion of new equipment and systems necessary at the wastewater  
6 treatment plant, sewers and pump stations to ensure adequate  
7 services and to ensure the ability of said city's wastewater treat-  
8 ment plant, sewers and pump stations to operate in full compli-  
9 ance with all applicable requirements of federal, state and local  
10 law; provided, however, that such contract or contracts shall not  
11 be subject to the competitive bid requirements set forth in sections  
12 thirty-eight A½ to thirty-eight O, inclusive, of chapter seven of  
13 the General Laws, section thirty-nine M of chapter thirty of the  
14 General Laws, or sections forty-four A to forty-four M, inclusive,  
15 of chapter one hundred forty-nine of the General Laws; provided,  
16 further, that said contract shall be awarded pursuant to the provi-  
17 sions of chapter thirty B of the General Laws except for para-  
18 graph (3) of subsection (b), paragraph (3) of subsection (e),  
19 subsection (g) of section six and sections thirteen and sixteen.

20 The request for proposals for such contract shall specify the  
21 method for comparing proposals to determine the proposal  
22 offering the lowest overall cost to the city, including, but not  
23 limited to, all capital financing, operating and maintenance costs.  
24 If the city awards the contract to an offeror who did not submit the  
25 proposal offering the lowest overall cost, the city shall explain the  
26 reason for the award in writing.

1 SECTION 2. (a) Notwithstanding the provisions of any general  
2 or special law to the contrary, any such contract may provide for a  
3 term, not exceeding twenty years, and an option for renewal or  
4 extension for operations and maintenance services not exceeding  
5 any additional five years. Such renewal shall be at the sole dis-  
6 cretion of the city in accordance with the original contract terms  
7 and conditions or contract terms and conditions more favorable to  
8 and acceptable to the city. Such contract and such renewal thereof  
9 may further provide that said city of Taunton shall not be exempt  
10 from liability thereon, subject to a majority vote of the municipal  
11 council.

12 (b) Any contract entered into pursuant to this act may provide  
13 for such activities deemed necessary to carry out the purposes  
14 authorized herein, including, but not limited to, equipment,  
15 facility or land sale or lease, equipment installation and replace-  
16 ment, performance testing and operation, studies, design and engi-  
17 neering work, construction work, ordinary repairs and  
18 maintenance, and the furnishing of all related material, supplies  
19 and services required for the wastewater treatment plant, sewers,  
20 and pump stations and the management, operation, maintenance  
21 and repair of said city's wastewater treatment plant, sewers and  
22 related pump stations.

1 SECTION 3. The chief procurement officer shall solicit pro-  
2 posals through a request for proposals which shall include those  
3 items in paragraphs (1) and (2) of subsection (b) of section six of  
4 chapter thirty B of the General Laws and proposed key contractual  
5 terms and conditions to be incorporated into the contract, some of  
6 which may be deemed mandatory or non-negotiable; provided,  
7 however, that the request for proposals may request proposals or  
8 offer options for fulfillment of other contractual terms, and such  
9 other matters as may be determined by the city.

1 SECTION 4. The chief procurement officer shall make a pre-  
2 liminary determination of the most advantageous proposal from a  
3 responsible and responsive offeror taking into consideration price,  
4 estimated life-cycle costs and the other evaluation criteria set  
5 forth in the request for proposal. The chief procurement officer  
6 may negotiate all terms of the contract not deemed mandatory or

7 non-negotiable with such offeror. If after negotiation with such  
8 offeror, the chief procurement officer determines that it is in the  
9 city's best interests, the chief procurement officer may determine  
10 the next most advantageous proposal from a responsible and  
11 responsive offeror taking into consideration price, estimated life-  
12 cycle costs and the other evaluation criteria set forth in the request  
13 for proposals, and may negotiate all terms of the contract not  
14 deemed mandatory or non-negotiable with such offeror. The chief  
15 procurement officer shall award the contract to the most advanta-  
16 geous proposal from a responsible and responsive offeror taking  
17 into consideration price, estimated life-cycle costs, the evaluated  
18 criteria set forth in the request for proposals, and the terms of the  
19 negotiated contract. Subject to the approval of the mayor and the  
20 municipal council, the chief procurement officer shall award the  
21 contract by written notice to the selected offeror within the time  
22 for acceptance specified in the request for proposals. Such award  
23 shall be subject to sections five and six of this act. The parties  
24 may extend the time for acceptance by mutual agreement.

1 SECTION 5. Notwithstanding any other provisions of this act,  
2 it shall be a mandatory term of any request for proposal issued by  
3 the city of Taunton and of any contract entered into by said city  
4 with any party regarding the subject matter of this act, that any  
5 party that has entered into a contract pursuant to the terms of this  
6 act with said city, shall require, in order to maintain stable and  
7 productive labor relations and to avoid interruption of the operation  
8 of the plant and to preserve the health, safety and environ-  
9 mental conditions of residents of said city and surrounding  
10 communities, that any and all employees working on the operation  
11 and maintenance of the wastewater treatment plant, sewers and  
12 pumping stations be offered employment by any party entering  
13 into a contract with said city for the operation and maintenance of  
14 said facilities, and furthermore, said party entering into a contract  
15 with said city, shall adopt all terms and conditions of employment  
16 provided by the last applicable labor agreement negotiated  
17 between the labor organization representing said employees and  
18 the applicable employer who has most recently employed said  
19 employees prior to entering into any contract pursuant to this act,  
20 and provided that any party entering into said contract with said

21 city pursuant to this act will pay all said employees no less than  
22 the sum of the applicable wages paid to said employees by their  
23 previous employer and by said city, if applicable. Moreover, said  
24 parties shall furthermore agree to meet its legal obligations with  
25 regard to any labor organization representing employees engaged  
26 in the operation and maintenance of the wastewater treatment  
27 plant, sewers and pumping stations described herein. Notwith-  
28 standing any other provisions of this act, any proposal or contract  
29 for this purpose and not complying with the above terms, shall be  
30 disqualified from consideration.

1 SECTION 6. Subject to the provisions of this act, any contract  
2 awarded pursuant to this act shall be subject to such terms and  
3 conditions as the mayor and the municipal council shall determine  
4 to be in the best interests of the city of Taunton and shall be sub-  
5 ject to a majority vote of the municipal council.

1 SECTION 7. Notwithstanding the provisions of any general or  
2 special law or regulation to the contrary, the department of envi-  
3 ronmental protection may issue project approval certificates with  
4 respect to the contract procured by said city for wastewater treat-  
5 ment facility improvements, and any design and construction  
6 services included in such contract shall be eligible for assistance  
7 under the Massachusetts Water Pollution Abatement Trust estab-  
8 lished by chapter two hundred and seventy-five of the acts of  
9 nineteen hundred and eighty-nine.

1 SECTION 8. The provisions of any general or special law or  
2 special act or regulation relating to the advertising, bidding or  
3 award of contracts, to the procurement of services or to the con-  
4 struction and design of improvements, shall not be applicable to  
5 any selected offeror which is awarded a contract pursuant to this  
6 act, except as provided in this section. The construction of any  
7 new capital improvement or any renovation, modernization,  
8 installation, or replacement work estimated to cost more than one  
9 hundred thousand, not specifically included in the initial contract  
10 for the lease or sale, operation and maintenance, design and  
11 construction of the wastewater plant, sewers and pump stations,  
12 shall be procured on the basis of advertised sealed bids; provided,

13 however, that bids need not be solicited if the contractor causes  
14 such construction, renovation, modernization, installation or  
15 replacement work to be completed without direct or indirect  
16 reimbursement from the city or other adjustment to the fees or  
17 costs paid by the city, including, but not limited to, any adjustment  
18 to water or sewer rates paid by the city's residents or businesses.  
19 Bids shall be based on detailed plans and specifications and the  
20 contract shall be awarded to the lowest responsible and eligible  
21 bidder. The contractor may act as an agent of the city in the solici-  
22 tation of bids for the construction of any new capital improvement  
23 or for any renovation modernization, installation or replacement  
24 work pursuant to this section, provided that the contractor and all  
25 subsidiaries and affiliates of the contractor shall be ineligible to  
26 bid on said contract.

27 All contracts for such work shall be subject to the requirements  
28 of Chapter 2, Article 11, of the city ordinances relating to  
29 the employment of residents of the city in municipal construction  
30 projects.

1 SECTION 9. All contracts or subcontracts for new construction,  
2 renovation, modernization, improvement or capital improvements  
3 to the Taunton wastewater treatment plant, including, but not  
4 limited to, all treatment facilities and pump stations shall be  
5 awarded only to persons or entities whose bids or proposals are  
6 subject to said persons or entities being signatory to a project  
7 labor agreement with the appropriate labor organizations which  
8 includes an obligation for said labor organizations and its con-  
9 stituent members not to strike with respect to the work on said  
10 construction project and which also establishes uniform work  
11 rules and schedules for the project. Said project agreement shall  
12 be entered into in order to facilitate the timely and efficient com-  
13 pletion of the construction of said improvements and make avail-  
14 able a ready and adequate supply of highly trained skilled craft  
15 workers which shall provide a nego-tiated commitment which is a  
16 legally enforceable means of assuring labor stability and labor  
17 peace over the life of this project. The applicable entity respon-  
18 sible for any construction, renovation, modernization, improve-  
19 ment, or capital improvement to the Taunton wastewater plant and  
20 pumping stations shall designate a general contractor, project

21 manager, or similar construction firm which is familiar in the  
22 negotiation and administration of project labor agreements to  
23 manage and oversee the construction of the project, including the  
24 development and implementation of labor relation policies for the  
25 project, and to instruct such general contractor, project manager,  
26 or other construction firm to negotiate a mutually agreeable  
27 project labor agreement covering the above described work. All  
28 contracts for such work shall be subject to the requirements of  
29 Chapter 2, Article 11, of the city ordinances relating to the  
30 employment of residents of the city in municipal construction  
31 projects.

1 SECTION 10. This act shall take effect upon its passage.

