

1 **DRAFT The Open and Fair Competition Act for Water and**
2 **Wastewater Projects**

3 ***Summary***
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5 It is the intention of this Act to ensure that all proven and acceptable piping materials
6 must be included in all bids for water and wastewater projects. This promotion of free
7 competition will ensure limited government resources are being used to the greatest
8 advantage.
9

10 ***Model Legislation***
11

12 **{Title, Enacting clause, etc.}**
13

14 Be it enacted by the legislature of the state of [insert state].
15

16 **Section 1. {Definitions}**
17

18 (A) Governmental agency refers to any state agency, state district, city, county, city and
19 county, including a chartered city or county, school district, community college district,
20 public district, county board of education, joint powers authority, water or sewer district,
21 special district, or any other public or municipal corporation.
22

23 (B) A piping material is considered proven and acceptable if it meets current and
24 recognized standards as issued by the American Society for Testing and Materials
25 (ASTM) and the American Water Works Association (AWWA) and other recognized
26 standards and certification agencies. The goal is to construct a project at the best price
27 and best value for system customers and taxpayers.
28

29 (C) Best price and best value refers to a combination of project quality, sustainability,
30 durability, corrosion resistance, price and outcomes that taken together provides the most
31 benefit to taxpayers for long-term asset management.
32

33 **Section 2. {Findings}**
34

35 (A) The nation’s water and sewer infrastructure is deteriorating and is corroding at an
36 alarming rate. At the same time, complying with the Safe Drinking Water Act and Clean
37 Water Act requires extensive upgrades of many water and sewer systems/utilities.
38

39 (B) According to a 2002 congressional study, corrosion is a drag on the U.S. economy,
40 costing U.S. drinking water and wastewater systems more than \$50.7 billion annually.
41 Corroding piping materials have also contributed to the decline of water quality and are
42 responsible for a staggering amount of water loss each year. All told, leaking, corroding

43 pipes lose some 2.6 million gallons of drinking water every year or 17 percent of all
44 water pumped in the United States.¹

45
46 (C) The majority (60 percent) of replacement costs are for water transmission and
47 distribution and sewer pipes. Building and replacing water and sewer lines alone will cost
48 some \$600 billion to \$1.1 trillion over the next 20 years.

49
50 (D) The easiest way for water and sewer utilities to reduce costs, drive innovation and
51 more effectively manage their underground infrastructure is to ensure all approved piping
52 materials and technologies get considered in bidding processes.

53
54 (E) Considering all approved piping materials and technologies will maximize scarce
55 federal and state funding for state revolving funds and other grants provided to localities.

56
57 (F) Sound infrastructure asset management principle should be applied, which will ensure
58 that only the longest lasting and most efficient pipe is used with the lowest operations and
59 maintenance costs.

60
61 **Section 3. {Application}**

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63 (A) It is the intent of the Legislature that:

64
65 (1) State and local government agencies have the authority to engage in open
66 competitive bidding to study, plan, design, construct, develop, finance, maintain,
67 rebuild, improve, repair, or operate water and wastewater utilities.

68
69 (2) When or where any state or local taxpayer dollars/grants are used to fund, for
70 example through State Revolving Funds (SRFs), any water or wastewater project,
71 all procurement transactions for piping and other materials shall be conducted in a
72 manner that provides for maximum open and free competition. All proven and
73 acceptable piping materials must be included in all bids

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75 (3) This Act creates no new governmental agencies.

76
77 (4) This Act specifically prohibits practices that may result in unlawful activity
78 including, but not limited to, rebates, kickbacks, or other unlawful considerations,
79 and prohibits government entity employees from participating in the selection
80 process when those employees have a relationship with private entities seeking a
81 contract under this Act or as proscribed by existing state or local contracting law.

82

¹ CC Technologies Laboratories, Inc. Sponsored by the Office of Infrastructure Research and Development, Federal Highway Administration. (September 30, 2001). *Corrosion Cost and Preventative Strategies in the United States* Retrieved February 28, 2012.

83 (5) This Act serves to ensure that open procurement procedures are utilized in the
84 selection of piping materials for water and wastewater infrastructure projects
85 undertaken by state or local agencies where state funding is used.
86

87 **Section 4. {Severability clause}**

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89 **Section 5. {Repealer clause}**

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91 **Section 6. {Effective date}**



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