

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Sonia Chang-Diaz

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 adoption of the accompanying bill:

An Act relative to jobs, workforce development, and main street fairness.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Sonia Chang-Diaz</i>	
<i>James B. Eldridge</i>	
<i>Patricia D. Jehlen</i>	
<i>Daniel A. Wolf</i>	

SENATE No.

By Ms. Chang-Diaz, a petition (subject to Joint Rule 12) of Sonia Chang-Diaz, James B. Eldridge, Patricia D. Jehlen and Daniel A. Wolf for legislation relative to jobs, workforce development, and main street fairness. Economic Development and Emerging Technologies.

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act relative to jobs, workforce development, and main street fairness.

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. Section 1 of chapter 7 of the General Laws, as appearing in the 2008
2 Official Edition, is hereby amended by inserting after the last paragraph the following
3 paragraphs:-

4 “Low income community”, a municipality where the median household income is 65
5 percent or less than the statewide household median income. In the case of a municipality with
6 50,000 residents or more, low income community shall mean a geographically contiguous,
7 historically recognized neighborhood of 10,000-50,000 residents.

8 “Minority business enterprise”, as used in this chapter shall be defined as it is in Section
9 40 of Chapter 23A.

10 “Women business enterprise” as used in this chapter shall be defined as it is in Section 40
11 of Chapter 23A.

12 SECTION 2. Section 14C of said chapter 7, as so appearing, is hereby amended by
13 inserting after the last paragraph the following paragraphs:-

14 Within 150 calendar days of the effective date of this section, any entity awarded a
15 contract under the provisions of Chapter 7, shall provide written verification with every invoice
16 submitted to the awarding authority detailing the portion of the payment that will be allocated to
17 minority business enterprises and women business enterprises, and reporting the racial, ethnic
18 and gender make-up of the awardees' workforce in Massachusetts. The awardee shall take
19 necessary steps to prevent the disclosure of individually-identifying information about
20 employees on this report.

21 The executive office of administration and finance shall, within 90 calendar days of the
22 effective date of this section, promulgate a template reporting form, for optional use by the
23 awarding authority, to assist contractors in meeting the requirements of this section.

24 The awarding authority shall submit the report to the Massachusetts Management and
25 Reporting System (MMARS) within 30 calendar days of receiving it. The Comptroller of the
26 Commonwealth shall, within 120 of the effective date of this section, develop appropriate fields
27 within the MMARS for receiving this data.

28 The Comptroller shall, within 180 days of the effective date of this section, develop a
29 public reporting website, or area within an existing website administered by the Office of the
30 Comptroller, for the purposes of timely public disclosure of the data collected under this section.
31 Such website shall provide the data collected under this section in machine-readable format and
32 be searchable by the public to the project and vendor level. The Comptroller may use, but not be
33 limited to, the website of the Massachusetts Recovery and Reinvestment Office as a guide in

34 creating a user interface that is searchable to the project and vendor level. The Comptroller shall
35 transfer data received from awarding authorities through the MMARS into the public website on
36 at least a quarterly basis.

37 SECTION 3. Said chapter 7, as so appearing, is hereby amended by inserting after
38 Section 23B the following section:-

39 Section 23B ½ Contracting diversity goals

40 For the purposes of this chapter, it shall be the official goal of the Commonwealth to
41 achieve minority business enterprise and women business enterprise contracting goals within
42 state procurement that are reflective of the diverse racial, ethnic, and gender make-up of the
43 Commonwealth's population.

44 SECTION 4. Section 38F of said chapter 7, as so appearing, is hereby amended by
45 inserting after the word "project", in line 9, the following text:-

46 , including evidence of the applicant's ability to advance the Commonwealth's
47 contracting and workforce inclusion goals as stated in Section 23B ½ of Chapter 7.

48 SECTION 5. Section 13 of chapter 13 of the General Laws, as appearing in the 2010
49 Official Edition, is hereby amended, in subsection (a), by striking the figure "17" in line 1 and
50 inserting in place thereof the following figure:-

51 18

52 SECTION 6. Said section 13 of said chapter 13, as so appearing, is hereby amended, in
53 subsection (a), by striking the words "and 2 consumers." in line 8, and inserting in place thereof
54 the following words:-

55 ; 2 consumers; and a vocational-technical licensed practical nursing educator or
56 administrator who shall be selected from a group of three nominees, to be nominated by the
57 Massachusetts Association of Vocational Administrators.

58 SECTION 7. Section 32 of said chapter 13, as so appearing, is hereby amended by
59 striking the word "eight" in line 4 and inserting in place thereof the following word:-

60 nine

61 SECTION 8. Section 32 of said chapter 13, as so appearing, is hereby amended by
62 inserting after the word "forty-one." in line 8 the following sentence:-

63 One of said appointees shall be a vocational-technical electrical educator or
64 administrator, who shall be selected from a group of three nominees, to be nominated by the
65 Massachusetts Association of Vocational Administrators.

66 SECTION 9. Section 36 of said chapter 13, as so appearing, is hereby amended by
67 striking the word "nine" in line 3 and inserting in place thereof the following word:-

68 ten

69 SECTION 10. Section 36 of said chapter 13, as so appearing, is hereby amended by
70 striking the word "seven" in line 5 and inserting in place thereof the following word:-

71 eight

72 SECTION 11. Section 36 of said chapter 13, as so appearing, is hereby amended by
73 inserting, after the words "systems," in line 16 the following words:-

74 , one of whom shall be a vocational-technical plumbing educator or administrator who
75 shall be selected from a group of three nominees to be nominated by the Massachusetts
76 Association of Vocational Administrators,

77 SECTION 12. Section 42 of said chapter 13, as appearing in the 2008 Official Edition, is
78 hereby amended by striking the word "seven" in line 2 and inserting in place thereof the
79 following word:-

80 eight

81 SECTION 13. Said section 42 of said chapter 13, as so appearing, is hereby amended by
82 striking the word "and" in line 35.

83 SECTION 14. Said section 42 of said chapter 13, as so appearing, is hereby amended by
84 striking the word "cosmetology" in line 36 and 37 and inserting in place thereof the following
85 words:-

86 cosmetology; and (c) one member shall be a vocational-technical cosmetology educator
87 or administrator who shall be selected from a group of three nominees, to be nominated by the
88 Massachusetts Association of Vocational Administrators.

89 SECTION 15. Section 101 of said chapter 13, as so appearing, is hereby amended, in
90 subsection (a), by striking the figure "5" in line 4 and inserting in place thereof the following
91 figure:-

92 6

93 SECTION 16. Said section 101 of said chapter 13, as so appearing, is hereby amended, in
94 subsection (a), by inserting, after the word "work," in line 9 the following words:-

95 , 1 of whom shall be a vocational-technical sheet metal educator or administrator who
96 shall be selected from a group of three nominees, to be nominated by the Massachusetts
97 Association of Vocational Administrators,

98 SECTION 17. Section 2WWW of chapter 29 of the General Laws, as appearing in the
99 2010 Official Edition, is hereby amended, in line 20, by striking the following word:- and

100 SECTION 18. Said section 2WWW of said chapter 29, as so appearing, is hereby
101 amended, in line 21, by inserting after the word “occupations” the following:-

102 “; training and education in conjunction with the Commonwealth’s economic
103 development strategy to meet the needs of employers in high growth sectors; and identifying and
104 addressing the gaps between the skills currently held by Massachusetts workers and the skills
105 needed by its employers for jobs that require more than a high school diploma but less than a
106 four-year degree”

107 SECTION 19. Section 1 of chapter 64H, as so appearing, is hereby amended by striking
108 lines 10 to 41, inclusive, and inserting in place thereof the following definition:-

109 “Engaged in business in the commonwealth”, having a business location in the
110 commonwealth; regularly or systematically soliciting orders for the sale of services to be
111 performed within the commonwealth or for the sale of tangible personal property for delivery to
112 destinations in the commonwealth; otherwise exploiting the retail sales market in the
113 commonwealth through any means whatsoever, including, but not limited to, salesmen, solicitors
114 or representatives in the commonwealth, catalogs or other solicitation materials sent through the
115 mails or otherwise, billboards, advertising or solicitations in newspapers, magazines, radio or
116 television broadcasts, computer networks or in any other communications medium; or regularly

117 engaged in the delivery of property or the performance of services in the commonwealth. A
118 person shall be considered to have a business location in the commonwealth only if such person
119 (i) owns or leases real property within the commonwealth; (ii) has one or more employees
120 located in the commonwealth; (iii) regularly maintains a stock of tangible personal property in
121 the commonwealth for sale in the ordinary course of business; or (iv) regularly leases out
122 tangible personal property for use in the commonwealth. The term “engaged in business in the
123 commonwealth” shall also have the meaning set forth in section 1A of chapter 64H. For the
124 purposes of this paragraph and section 1A of chapter 64H, property on consignment in the hands
125 of a consignee and offered for sale by the consignee on his own account shall not be considered
126 as stock maintained by the consignor; a person having a business location in the commonwealth
127 solely by reason of regularly leasing out tangible personal property shall be considered to have a
128 business location in the commonwealth only with respect to such leased property; and an
129 employee shall be considered to be located in the commonwealth if (a) his service is performed
130 entirely within the commonwealth or (b) his service is performed both within and without the
131 commonwealth but in the performance of his services he regularly commences his activities at,
132 and returns to, a place within the commonwealth. “Within the commonwealth” means within the
133 exterior limits of the commonwealth of Massachusetts, and includes all territory within said
134 limits owned by, or leased or ceded to, the United States of America.

135 SECTION 20. Said chapter 64H, as so appearing, is hereby amended by inserting, after
136 section 1, the following new section:-

137 (a) A vendor shall be presumed to be “engaged in business in the commonwealth” for
138 purposes of this chapter and chapter 64I if any person, other than a person acting in its capacity
139 as a common carrier, that has substantial nexus in the commonwealth:

140 (1) sells a similar line of products as the vendor and does so under the same or a similar
141 business name;

142 (2) maintains an office, distribution facility, warehouse, storage place, or similar place of
143 business in the commonwealth to facilitate the delivery of property or services sold by the
144 vendor to the vendor's customers;

145 (3) uses trademarks, service marks, or trade names in the commonwealth that are the
146 same or substantially similar to those used by the vendor;

147 (4) delivers, installs, assembles, or performs maintenance services for the vendor's
148 customers within the commonwealth;

149 (5) facilitates the vendor's delivery of property to customers in the commonwealth by
150 allowing the vendor's customers to pick up property sold by the vendor at an office, distribution
151 facility, warehouse, storage place, or similar place of business maintained by the person in the
152 commonwealth;

153 (6) maintains any business location within the commonwealth, including, but not limited
154 to a technology facility, engineering facility, software development facility, research facility, or
155 similar business location in the commonwealth if such business location facilitates the sale of
156 property or services sold by the vendor to the vendor's customers or facilitates the development
157 of the vendor's market for sales in the commonwealth; or

158 (7) conducts any other activities in the commonwealth that are significantly associated
159 with the vendor's ability to establish and maintain a market in the commonwealth for the
160 vendor's sales.

161 (b) The presumptions in paragraph (a) of this section may be rebutted by demonstrating
162 that the person's activities in the commonwealth are not significantly associated with the
163 vendor's ability to establish or maintain a market in the commonwealth for the vendor's sales.

164

165 SECTION 21. Section 2 of said chapter 64H, as so appearing, is hereby amended by
166 striking the last sentence and inserting in place thereof the following new sentence:-

167 The excise shall be paid by every vendor engaged in business in the commonwealth to
168 the commissioner at the time provided for filing the return required by section 16 of chapter 62C.

169 SECTION 22. Section 3 of said chapter 64H, as so appearing, is hereby amended by
170 inserting, in line 3, after the words "and each vendor" the following new words:- engaged in
171 business

172 SECTION 23. Section 1 of chapter 74, as so appearing, is hereby amended by striking
173 lines 43 to 44, inclusive, and inserting in place thereof the following section:-

174 "Service programs", the preparation of students in occupational areas such as hotel and
175 lodging, cosmetology, child care or any service occupation that by its nature is characterized as
176 being a service, professional or non-professional. Such programs shall be in compliance with the
177 program approval criteria regulations published by the state board.

178 SECTION 24. Section 1 of chapter 149 of the General Laws, as appearing in the 2008
179 Official Edition, is hereby amended by inserting after the last paragraph, the following
180 paragraphs:-

181 “Low income community”, a municipality where the median household income is 65
182 percent or less than the statewide household median income. In the case of a municipality with
183 50,000 residents or more, low income community shall mean a geographically contiguous,
184 historically recognized neighborhood of 10,000-50,000 residents.

185 “Minority business enterprise”, as used in this chapter shall be defined as it is in Section
186 40 of Chapter 23A.

187 “Women business enterprise” as used in this chapter shall be defined as it is in Section 40
188 of Chapter 23A.

189 SECTION 25. Section 44A of said chapter 149, as so appearing, is hereby amended by
190 striking out lines 12-16, and inserting in its place thereof the following text:-

191 “Responsible” means demonstrably possessing the skill, ability and the integrity
192 necessary to faithfully perform the work called for by a particular contract, based upon a
193 determination of competent workmanship and financial soundness in accordance with the
194 provisions of section forty-four D of this chapter. In deliberating upon the responsibility of a
195 bidder, all contracting agencies shall give strong consideration to the bidder, contractor, or
196 proposed contractor’s ability to advance the Commonwealth’s contracting and workforce
197 inclusion goals as stated in Section 44A ½ of Chapter 149, and to any credible evidence or
198 reliable information about the bidder, contractor, or proposed contractor’s past or current work
199 performance, including, but not limited to, the failure of a bidder, contractor, or proposed
200 subcontractor to comply with the commitments made in their bidding or contract documents
201 regarding the employment of minority business enterprises and women business enterprises and
202 regarding workforce inclusion goals.

203 SECTION 26. Section 44A½ of said chapter 149, as so appearing, is hereby amended by
204 inserting after the last paragraph the following paragraphs:-

205 (d) It shall be the goal of the Commonwealth to achieve minority business enterprise and
206 women business enterprise contracting goals and workforce participation goals on state-funded
207 design and construction contracts that are reflective of the diverse racial, ethnic, and gender
208 make-up of the Commonwealth's population.

209 (e) It shall be the goal of the Commonwealth that job creation on state-funded
210 construction contracts be targeted to members of the community in which a project is physically
211 located and that the workforce on that project reflect the demographic diversity of the host
212 community, when construction projects are located in low income communities.

213 SECTION 27. Section 44D½ of said chapter 149, as so appearing, is hereby amended by
214 inserting after line 92, the following text:-

215 (viii) Joint Ventures, documentation demonstrating that the interested general contractors
216 have formed an association of two or more businesses in which one of the businesses is a
217 minority business enterprise or a women business enterprise as defined section 40 of chapter 23A
218 of the General Laws.

219 SECTION 28. Said section 44D½ of said chapter 149, as so appearing, is hereby
220 amended by inserting after line 110, the following text:-

221 (iii) Evidence of the bidder, contractor, or proposed contractor's ability to advance the
222 Commonwealth's contracting and workforce inclusion goals as stated in Section 44A ½ of
223 Chapter 149.

224 SECTION 29. Said chapter 149, as so appearing, is hereby amended by inserting after
225 section 44M the following section:-

226 Section 44N. Data collection and disclosure

227 Within 150 calendar days of the effective date of this section, any entity awarded a
228 contract for construction by a state agency shall provide written verification with every progress
229 payment request (PPR) submitted to the awarding authority detailing the portion of the payment
230 that will be allocated to minority business enterprises and women business enterprises
231 respectively, as defined in Section 40 of Chapter 23A, and detailing the total number of hours
232 worked by all employees on that contract during the period covered by the PPR; and including a
233 breakdown of hours worked by workers' ZIP codes of residence, as well as a breakdown of the
234 number of hours worked by women and workers of color, respectively. The reporting entity shall
235 take necessary steps to prevent the disclosure of individually-identifying information about
236 employees on this report.

237 The executive office of administration and finance shall, within 90 calendar days of the
238 effective date of this section, promulgate a template reporting form, for optional use by the
239 awarding authority, to assist contractors in meeting the requirements of this section.

240 The awarding authority shall submit the report to the Massachusetts Management and
241 Reporting System (MMARS) within 30 calendar days of receiving it. The Comptroller of the
242 Commonwealth shall, within 120 of the effective date of this section, develop appropriate fields
243 within the MMARS for receiving this data.

244 The Comptroller shall, within 180 days of the effective date of this section, develop a
245 public reporting website, or area within an existing website administered by the Office of the

246 Comptroller, for the purposes of timely public disclosure of the data collected under this section.
247 Such website shall provide the data collected under this section in machine-readable format and
248 be searchable by the public to the project and vendor level. The Comptroller may use, but not be
249 limited to, the website of the Massachusetts Recovery and Reinvestment Office as a guide in
250 creating a user interface that is searchable to the project and vendor level. The Comptroller shall
251 transfer data received from awarding authorities through the MMARS into the public website on
252 at least a quarterly basis.

253 SECTION 30. Notwithstanding section 14 of chapter 151A of the General Laws, the
254 experience rate of an employer qualifying therefor under subsection (b) of said section 14 of said
255 chapter 151A shall be the rate which appears in column "E" in clause (1) of subsection (i) of said
256 section 14 of said chapter 151A for calendar year 2012, and beginning on January 1, 2013, each
257 employer liable to pay a contribution under subsection (i) of section 14 shall also pay, in the
258 same manner and at the same times as the commissioner prescribes for the contribution required
259 by said section 14, a workforce development contribution. This contribution shall be set, to the
260 extent consistent with federal law, by the commissioner at a rate per employer so that the total
261 amount of said contributions by December 31, 2013 substantially equals \$20,000,000.00. The
262 Commissioner shall deposit the proceeds of said workforce development contributions in the
263 Workforce Competitiveness Trust Fund, established by section 2WWW of chapter 29.

264 SECTION 31. There is hereby established a commission on vocational-technical
265 education in the twenty first century, to investigate and study the feasibility of authorizing public
266 vocational-technical high schools to award post-secondary associates degrees. The commission
267 shall consist of 14 members: the secretary of education or the secretary's designee who shall
268 serve as chair of the commission; 2 members of the house of representatives, to be appointed by

269 the speaker of the house; 2 members of the senate, to be appointed by the senate president; 4
270 members to be appointed by the Massachusetts Association of Vocational Administrators; 3
271 individuals to be appointed by the governor; the commissioner of higher education or a designee;
272 and the commissioner of workforce development or a designee. The commission shall report to
273 the general court the results of its investigation and study and its recommendations, if any,
274 together with any drafts of legislation necessary to carry out such recommendations, by filing the
275 same with the clerks of the senate and house who shall forward the same to the chairs of the joint
276 committee on education on or before December 31, 2012.