

SENATE No. 1618

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:

Sonia Chang-Diaz

Second Suffolk

James B. Eldridge

Middlesex and Worcester

SENATE No. 1618

By Ms. Chang-Diaz, a petition (accompanied by bill, Senate, No. 1618) of Sonia Chang-Diaz and James B. Eldridge for legislation relative to jobs, workforce development, and main street fairness. State Administration and Regulatory Oversight.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 1462 OF 2013-2014.]

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

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 2012
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 58 of Chapter 7 of the General Laws, as appearing in the 2012 Official Edition.

10 “Women business enterprise” as used in this chapter shall be defined as it is in Section 58
11 of Chapter 7 of the General Laws, as appearing in the 2012 Official Edition.

12 SECTION 2. Section 14C of said chapter 7 of the General Laws, as so appearing in the
13 2012 Official Edition, is hereby amended by inserting after the last paragraph the following
14 paragraphs:-

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

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

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

29 SECTION 3. Said chapter 7 of the General Laws, as so appearing in the 2012 Official
30 Edition, is hereby amended by inserting after Section 23B the following section:-

31 Section 23B ½ Contracting diversity goals

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

36 SECTION 4. Section 13 of chapter 13 of the General Laws, as appearing in the 2012
37 Official Edition, is hereby amended, in subsection (a), by striking the figure "17" in line 1 and
38 inserting in place thereof the following figure:-

39 18

40 SECTION 5. Said section 13 of said chapter 13, as so appearing, is hereby amended, in
41 subsection (a), by striking the words "and 2 consumers." in line 8, and inserting in place thereof
42 the following words:-

43 ; 2 consumers; and a vocational-technical licensed practical nursing educator or
44 administrator who shall be selected from a group of three nominees, to be nominated by the
45 Massachusetts Association of Vocational Administrators.

46 SECTION 6. Section 36 of said chapter 13, as so appearing, is hereby amended by
47 striking the word "nine" in line 3 and inserting in place thereof the following word:-

48 ten

49 SECTION 7. Section 36 of said chapter 13, as so appearing, is hereby amended by
50 striking the word "seven" in line 5 and inserting in place thereof the following word:-

51 eight

52 SECTION 8. Section 36 of said chapter 13, as so appearing, is hereby amended by
53 inserting, after the words “systems,” in line 16 the following words:-

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

57 SECTION 9. Section 42 of said chapter 13, as appearing in the 2008 Official Edition, is
58 hereby amended by striking the word "seven" in line 2 and inserting in place thereof the
59 following word:-

60 eight

61 SECTION 10. Said section 42 of said chapter 13, as so appearing, is hereby amended by
62 striking the word "and" in line 35.

63 SECTION 11. Said section 42 of said chapter 13, as so appearing, is hereby amended by
64 striking the word "cosmetology" in line 36 and 37 and inserting in place thereof the following
65 words:-

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

69 SECTION 12. Section 101 of said chapter 13, as so appearing, is hereby amended, in
70 subsection (a), by striking the figure "5" in line 4 and inserting in place thereof the following
71 figure:-

72 6

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

75 , 1 of whom shall be a vocational-technical sheet metal educator or administrator who
76 shall be selected from a group of three nominees, to be nominated by the Massachusetts
77 Association of Vocational Administrators,

78 SECTION 14. Section 2WWW of chapter 29 of the General Laws, as appearing in the
79 2012 Official Edition, is hereby amended, in line 20, by striking the following word:- and

80 SECTION 15. Said section 2WWW of said chapter 29, as so appearing, is hereby
81 amended, in line 21, by inserting after the word “occupations” the following:-

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

87 SECTION 16. Section 1 of chapter 64H, as so appearing in the 2012 Official Edition, is
88 hereby amended by striking lines 10 to 41, inclusive, and inserting in place thereof the following
89 definition:-

90 “Engaged in business in the commonwealth”, having a business location in the
91 commonwealth; regularly or systematically soliciting orders for the sale of services to be
92 performed within the commonwealth or for the sale of tangible personal property for delivery to

93 destinations in the commonwealth; otherwise exploiting the retail sales market in the
94 commonwealth through any means whatsoever, including, but not limited to, salesmen, solicitors
95 or representatives in the commonwealth, catalogs or other solicitation materials sent through the
96 mails or otherwise, billboards, advertising or solicitations in newspapers, magazines, radio or
97 television broadcasts, computer networks or in any other communications medium; or regularly
98 engaged in the delivery of property or the performance of services in the commonwealth. A
99 person shall be considered to have a business location in the commonwealth only if such person
100 (i) owns or leases real property within the commonwealth; (ii) has one or more employees
101 located in the commonwealth; (iii) regularly maintains a stock of tangible personal property in
102 the commonwealth for sale in the ordinary course of business; or (iv) regularly leases out
103 tangible personal property for use in the commonwealth. The term “engaged in business in the
104 commonwealth” shall also have the meaning set forth in section 1A of chapter 64H. For the
105 purposes of this paragraph and section 1A of chapter 64H, property on consignment in the hands
106 of a consignee and offered for sale by the consignee on his own account shall not be considered
107 as stock maintained by the consignor; a person having a business location in the commonwealth
108 solely by reason of regularly leasing out tangible personal property shall be considered to have a
109 business location in the commonwealth only with respect to such leased property; and an
110 employee shall be considered to be located in the commonwealth if (a) his service is performed
111 entirely within the commonwealth or (b) his service is performed both within and without the
112 commonwealth but in the performance of his services he regularly commences his activities at,
113 and returns to, a place within the commonwealth. “Within the commonwealth” means within the
114 exterior limits of the commonwealth of Massachusetts, and includes all territory within said
115 limits owned by, or leased or ceded to, the United States of America.

116 SECTION 17. Said chapter 64H, as so appearing, is hereby amended by inserting, after
117 section 1, the following new section:-

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

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

123 (2) maintains an office, distribution facility, warehouse, storage place, or similar place of
124 business in the commonwealth to facilitate the delivery of property or services sold by the
125 vendor to the vendor’s customers;

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

128 (4) delivers, installs, assembles, or performs maintenance services for the vendor’s
129 customers within the commonwealth;

130 (5) facilitates the vendor’s delivery of property to customers in the commonwealth by
131 allowing the vendor’s customers to pick up property sold by the vendor at an office, distribution
132 facility, warehouse, storage place, or similar place of business maintained by the person in the
133 commonwealth;

134 (6) maintains any business location within the commonwealth, including, but not limited
135 to a technology facility, engineering facility, software development facility, research facility, or
136 similar business location in the commonwealth if such business location facilitates the sale of

137 property or services sold by the vendor to the vendor's customers or facilitates the development
138 of the vendor's market for sales in the commonwealth; or

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

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

145 SECTION 18. Section 2 of said chapter 64H, as so appearing, is hereby amended by
146 striking the last sentence and inserting in place thereof the following new sentence:-

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

149 SECTION 19. Section 3 of said chapter 64H, as so appearing, is hereby amended by
150 inserting, in line 3, after the words "and each vendor" the following new words:- engaged in
151 business

152 SECTION 20. Section 1 of chapter 149 of the General Laws, as appearing in the 2012
153 Official Edition is hereby amended by inserting after the last paragraph the following
154 paragraphs:-

155 "Low income community", a municipality where the median household income is 65
156 percent or less than the statewide household median income. In the case of a municipality with

157 50,000 residents or more, low income community shall mean a geographically contiguous,
158 historically recognized neighborhood of 10,000-50,000 residents.

159 “Minority business enterprise”, as used in this chapter shall be defined as it is in Section
160 58 of Chapter 7 of the General Laws, as appearing in the 2012 Official Edition

161 “Women business enterprise” as used in this chapter shall be defined as it is in Section 58
162 of Chapter 7 of the General Laws, as appearing in the 2012 Official Edition.

163 SECTION 21. Section 44A of said chapter 149, as so appearing, is hereby amended by
164 striking out lines 12-16, and inserting in its place thereof the following text:-

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

177 SECTION 22. Section 44A½ of said chapter 149, as so appearing, is hereby amended by
178 inserting after the last paragraph the following paragraphs:-

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

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

187 SECTION 23. Section 44D½ of said chapter 149, as so appearing, is hereby amended by
188 inserting after line 92, the following text:-

189 (viii) Joint Ventures, documentation demonstrating that the interested general contractors
190 have formed an association of two or more businesses in which one of the businesses is a
191 minority business enterprise or a women business enterprise as defined in Section 58 of Chapter
192 7 of the General Laws, as appearing in the 2012 Official Edition.

193 SECTION 24. Said section 44D½ of said chapter 149, as so appearing, is hereby
194 amended by inserting after line 110, the following text:-

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

198 SECTION 25. Said chapter 149, as so appearing, is hereby amended by inserting after
199 section 44M the following section:-

200 Section 44N. Data collection and disclosure

201 Within 150 calendar days of the effective date of this section, any entity awarded a
202 contract for construction by a state agency shall provide written verification with every progress
203 payment request (PPR) submitted to the awarding authority detailing the portion of the payment
204 that will be allocated to minority business enterprises and women business enterprises
205 respectively, as defined in Section 58 of Chapter 7, and detailing the total number of hours
206 worked by all employees on that contract during the period covered by the PPR; and including a
207 breakdown of hours worked by workers' ZIP codes of residence, as well as a breakdown of the
208 number of hours worked by women and workers of color, respectively. The reporting entity shall
209 take necessary steps to prevent the disclosure of individually-identifying information about
210 employees on this report.

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

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

218 SECTION 26. There is hereby established a commission on vocational-technical
219 education in the twenty first century, to investigate and study the feasibility of authorizing public
220 vocational-technical high schools to award post-secondary associates degrees. The commission
221 shall consist of 14 members: the secretary of education or the secretary's designee who shall

222 serve as chair of the commission; 2 members of the house of representatives, to be appointed by
223 the speaker of the house; 2 members of the senate, to be appointed by the senate president; 4
224 members to be appointed by the Massachusetts Association of Vocational Administrators; 3
225 individuals to be appointed by the governor; the commissioner of higher education or a designee;
226 and the commissioner of workforce development or a designee. The commission shall report to
227 the general court the results of its investigation and study and its recommendations, if any,
228 together with any drafts of legislation necessary to carry out such recommendations, by filing the
229 same with the clerks of the senate and house who shall forward the same to the chairs of the joint
230 committee on education on or before December 31, 2015.