HOUSE DOCKET, NO. 1819 FILED ON: 1/20/2011

HOUSE . . . . . No. 1752

The Commonwealth of Massachusetts

PRESENTED BY:

Martin J. Walsh

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 to Promote Responsible Contracting on State Construction Projects.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Martin J. Walsh	*13th Suffolk*
James J. Dwyer	*30th Middlesex*
James E. Timilty	
James J. O'Day	*14th Worcester*
Sean Garballey	*23rd Middlesex*
Thomas A. Golden, Jr.	*16th Middlesex*
Brian M. Ashe	*2nd Hampden*
Brian A. Joyce	*Norfolk, Bristol, and Plymouth*
John F. Keenan	
Denise Provost	*27th Middlesex*
Peter V. Kocot	*1st Hampshire*
Edward F. Coppinger	*10th Suffolk*
Carlo Basile	*1st Suffolk*
Angelo J. Puppolo, Jr.	*12th Hampden*
Timothy J. Toomey, Jr.	*26th Middlesex*
David B. Sullivan	*6th Bristol*
Cheryl A. Coakley-Rivera	*10th Hampden*
Sean Curran	*9th Hampden*

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HOUSE . . . . . No. 1752

By Mr. Walsh of Boston, a petition (accompanied by bill, House, No. 1752) of Martin J. Walsh and others relative to promoting responsible contracting on state construction projects. State Administration and Regulatory Oversight.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act to Promote Responsible Contracting on State Construction Projects.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Chapters 149, 149a and Chapter 30 Section 39m are hereby amended by adding the following sections:

Section 1 . Because of the expenditure of substantial public funds for public construction projects and in to ensure trained work force for the future; it is in the public's interest, as well as public health, welfare and safety, to ensure that the employees on such projects are paid at the lawfully required prevailing wage rates; have been trained in bona fide state-registered apprenticeship programs; have health insurance coverage; are provided industrial accident coverage; and are properly classified as employees and not as independent contractors.

Section 2 .Compliance of Bidders and Subcontractors. All bidders and all subcontractors on all state contracts for construction under Chapters 149, 149a and Chapter 30 section 39m. shall, at the time of bid, agree in writing that they shall comply with the following:

12 a. The bidder and all subcontractors under the bidder shall comply with the
13 responsible employer requirements set forth below.

14 b. The bidder and all subcontractors under the bidder shall comply with provisions
15 of M.G.L. Ch. 149 and shall pay the appropriate lawful prevailing wage rates to their employees.

16 c. The bidder and all subcontractors under the bidder awarded a contract shall, to the
17 extent consistent with applicable law, give special consideration to recruit and hire qualified
18 workers who are residents of the Commonwealth for each apprenticeable trade or occupation
19 represented in their workforce.

20 d. The bidder and all subcontractors under the bidder shall maintain or participate in
21 a bona fide and active apprentice training program as defined by M.G.L. Ch. 23, Sec. 11H and
22 11I for each apprenticeable trade or occupation represented in their workforce that is approved
23 by the Division of Apprentice Training of the Department of Labor and Workforce Development
24 of the Commonwealth of Massachusetts and shall abide by the apprentice to journeymen ratio for
25 each trade prescribed therein in the performance of the contract. For the purposes of this
26 paragraph, the word "active" shall mean an apprentice training program which is registered with
27 the division for recruitment, selection, employment, training, and qualification of apprentices and
28 which has successfully completed one (1) year of initial approval and registration with the
29 division and achieved permanent status.

30 e. The bidder and all subcontractors shall have hospitalization and medical benefits
31 that meet the minimum requirements of the Connector Board established by Chapter 58 of the
32 Acts of 2006.

33 f. The bidder and all subcontractors under the bidder shall maintain appropriate
34 industrial accident insurance coverage for all the employees employed on the project in
35 accordance with M.G.L. Ch. 152.

36 g. The bidder and all subcontractors under the bidder shall properly classify
37 employees employed on the project as employees rather than independent contractors and shall
38 properly classify said employees accordingly for purposes of workers' compensation insurance
39 coverage, employment taxes, Social Security taxes and income tax withholding pursuant to
40 M.G.L. Ch. 149, Sec. 148B.

41 h. The bidder and all subcontractors shall ensure that all employees have the
42 appropriate and required licenses for their position.

43 i. All bidders and all subcontractors under the bidders who are awarded contracts
44 pursuant to these bid documents shall comply with these Responsible Employer Requirements
45 for the duration of their work on the project, and an officer of each such contractor or
46 subcontractor shall certify under oath and in writing on a weekly basis that they are in
47 compliance with the Requirements.

48 II. Requirements Before Bid Opening. All bidders and all subcontractors under the
49 bidders shall provide documentation and shall certify in writing that they are in compliance with
50 these Responsible Employer Requirements before the bid opening.

51

52 III. Job Site "Harmony" Certification. The bidder and all subcontractors shall certify
53 in writing that their employees shall be able to work in harmony with employees of all other

54 subcontractors on the job site. “Harmony” means that the presence of any subcontractor’s
55 employees shall not result in any picket line, work stoppage or any other form of labor
56 demonstrated on the job site of labor organizations representing the trades and/or crafts of the
57 employees on the job sites.

58 IV. Health Insurance. With the submission of bids, the bidder shall submit a written
59 statement detailing for each trade that it will employ in the performance of the contract, the
60 health insurance that it will furnish to its employees. The statement shall include, but not be
61 limited to, the name of the insurance carrier, if any, a copy of the insurance binder, a description
62 of the benefits provided to the employees, including all co-payments and deductibles, the cost of
63 the insurance to the bidder and to the employee, the minimum qualifications for the coverage,
64 and a statement as to whether or not the coverage meets the standards for minimum creditable
65 coverage under Massachusetts law. If the bidder is awarded a contract, such health insurance
66 policy will become part of the contract documents. Receipt of the policy by the awarding
67 authority and inclusion in the contract document shall not be deemed to be approval by the
68 awarding authority of the insurance or of its sufficiency and shall in no event relieve the bidder
69 of its responsibility to furnish comprehensive health insurance to its employees. Any bidder who
70 contributes to a multi-employer health and welfare trust fund pursuant to a collective bargaining
71 agreement may satisfy the reporting requirements of this subsection by identifying said health
72 and welfare fund.

73

74 V. Penalties and Enforcement.

75 a. Any bidder or subcontractor under the bidder who is awarded a contract on this
76 project and who fails to comply with any of the obligations set forth herein shall, by decision of
77 the Commonwealth be subject to one or more of the following:

78 i. Assessment of a fine of three hundred dollars ($300) per day of the violation.
79 Any fine imposed which is not paid in full by the violator shall be offset by the Commonwealth
80 against any payment due to the contractor under the contract for the project, to the extent allowed
81 by law.

82 ii. Cessation of work on the project until compliance is obtained.

83 iii. Withholding by the Commonwealth of payment due under any contract of
84 subcontract until compliance is obtained.

85 iv. Permanent removal from any further work on the project.

86 b. In addition to the sanctions outlined in subsection a. above, a general bidder or
87 contractor shall be equally liable for the violations of its subcontractor, with the exception of the
88 violations arising from work performed pursuant to the subcontracts that are subject to M.G.L.
89 Ch. 149, Sec. 44F. Any contractor or subcontractor who has been determined to have violated
90 any of the obligations set forth in these Responsible Employer Requirements shall be barred
91 from performing any work on any future projects for six months for a first violation, for three (3)
92 years for a second violation, and permanently for a third violation, to the extent permissible by
93 law.

94 c. In addition to the sanctions outlined in subsection a. and b. above, any bidder or
95 subcontractor under the bidder who is awarded a contract or who otherwise obtains a contract on

96 this project, and who fails to comply with the harmony requirement outlined above in section IV,
97 may at the sole discretion of the Commonwealth be subject to the following penalties:

98 i. Assessment of the costs incurred by the Commonwealth for the contractor or the
99 subcontractors to provide security (such as in the form of police details, security fences,
100 establishment of separate gates, etc.), lost work days for every employee who is prevented from
101 working on the job site by the establishment of picket lines, work stoppage or other labor
102 demonstrations;

103 ii. Liquidated damages payable to the Commonwealth in the amount of five percent
104 (5%) of the dollar value of the contract entered into by the contractor or subcontractor who
105 cannot comply with the harmony clause.

106 d. A violation of these Responsible Employer Requirements shall be a material
107 breach of the contract.

108

109 QUESTIONNAIRE AND CERTIFICATION RELATIVE TO COMPLIANCE WITH
110 RESPONSIBLE EMPLOYER REQUIREMENTS

111 ALL BIDDERS ARE REQUIRED TO COMPLETE THE FOLLOWING:

112 1. I hereby agree and certify by signing below that my company complies with all of
113 the above Responsible Employer Requirements.

114 2. My company maintains or participates in a certified apprenticeship training
115 program:

116 o Name of program _____

117 o Address of program _____

118 o Contact person _____

119 o Telephone number _____

120 o Is the program an employer-sponsored/paid program? ____ yes ____no

121 □ If no, who pays for the program? _____

122 o How many apprentices have graduated from your program during the last three

123 years?

124 2007_____

125 2008_____

126 2009_____

127 o Has your apprenticeship training program been suspended since January 1, 2007?

128 ____ yes ____ no

129 3. My company provides health insurance, industrial accident insurance and pension

130 benefits as described in the Responsible Employer Requirements.

131 o Name of health insurance carrier and applicable policy

132 _____

133 o Name of industrial accident insurance carrier:_____

134 o Name of applicable pension plan _____

135 I hereby certify that the information and responses provided above are true and accurate.

136 Signed under the pains and penalties of perjury this _____ day of _____,

137 2010.

138 Signature: _____

139 Name: _____

140 Title: _____

141 Company: _____