SENATE DOCKET, NO. 2269 FILED ON: 7/5/2012

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:
Sonia Chang-Diaz	
James B. Eldridge	
Patricia D. Jehlen	
Daniel A. Wolf	

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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:

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

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

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

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

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

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

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

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

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

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

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

Section 23B ½ Contracting diversity goals

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

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

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

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

18

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

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

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

nine

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

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

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

ten

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

eight

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

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

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

eight

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

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

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

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

6

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 44N. Data collection and disclosure

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

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

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

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

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

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

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

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