

SENATE No. 1462

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>Second Suffolk</i>
<i>Daniel A. Wolf</i>	<i>Cape and Islands</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>

SENATE No. 1462

By Ms. Chang-Diaz, a petition (accompanied by bill, Senate, No. 1462) of Sonia Chang-Diaz, Daniel A. Wolf and James B. Eldridge for legislation relative to jobs, workforce development, and main street fairness. State Administration and Regulatory Oversight.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

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

30 Section 23B ½ Contracting diversity goals

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

35 SECTION 4. Section 38F of said chapter 7, as so appearing, is hereby amended by
36 inserting after the word "project", in line 9, the following text:- , including evidence of the
37 applicant's ability to advance the Commonwealth's contracting and workforce inclusion goals as
38 stated in Section 23B ½ of Chapter 7.

39 SECTION 5. Section 13 of chapter 13 of the General Laws, as appearing in the 2010
40 Official Edition, is hereby amended, in subsection (a), by striking the figure "17" in line 1 and
41 inserting in place thereof the following figure:- 18

42 SECTION 6. Said section 13 of said chapter 13, as so appearing, is hereby amended, in
43 subsection (a), by striking the words "and 2 consumers." in line 8, and inserting in place thereof
44 the following words:- ; 2 consumers; and a vocational-technical licensed practical nursing
45 educator or administrator who shall be selected from a group of three nominees, to be nominated
46 by the Massachusetts Association of Vocational Administrators.

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

49 SECTION 8. Section 32 of said chapter 13, as so appearing, is hereby amended by
50 inserting after the word "forty-one." in line 8 the following sentence:- One of said appointees
51 shall be a vocational-technical electrical educator or administrator, who shall be selected from a

52 group of three nominees, to be nominated by the Massachusetts Association of Vocational
53 Administrators.

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

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

58 SECTION 11. Section 36 of said chapter 13, as so appearing, is hereby amended by
59 inserting, after the words "systems," in line 16 the following words:- , one of whom shall be a
60 vocational-technical plumbing educator or administrator who shall be selected from a group of
61 three nominees to be nominated by the Massachusetts Association of Vocational Administrators,

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

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

67 SECTION 14. Said section 42 of said chapter 13, as so appearing, is hereby amended by
68 striking the word "cosmetology" in line 36 and 37 and inserting in place thereof the following
69 words:- cosmetology; and (c) one member shall be a vocational-technical cosmetology educator
70 or administrator who shall be selected from a group of three nominees, to be nominated by the
71 Massachusetts Association of Vocational Administrators.

72 SECTION 15. Section 101 of said chapter 13, as so appearing, is hereby amended, in
73 subsection (a), by striking the figure "5" in line 4 and inserting in place thereof the following
74 figure:- 6

75 SECTION 16. Said section 101 of said chapter 13, as so appearing, is hereby amended, in
76 subsection (a), by inserting, after the word "work," in line 9 the following words:- , 1 of whom
77 shall be a vocational-technical sheet metal educator or administrator who shall be selected from a
78 group of three nominees, to be nominated by the Massachusetts Association of Vocational
79 Administrators,

80 SECTION 17. Section 2WWW of chapter 29 of the General Laws, as appearing in the
81 2010 Official Edition, is hereby amended, in line 20, by striking the following word:- and

82 SECTION 18. Said section 2WWW of said chapter 29, as so appearing, is hereby
83 amended, in line 21, by inserting after the word "occupations" the following:- " ; training and
84 education in conjunction with the Commonwealth's economic development strategy to meet the
85 needs of employers in high growth sectors; and identifying and addressing the gaps between the

86 skills currently held by Massachusetts workers and the skills needed by its employers for jobs
87 that require more than a high school diploma but less than a four-year degree”

88 SECTION 19. Section 1 of chapter 64H, as so appearing, is hereby amended by striking
89 lines 10 to 41, inclusive, and inserting in place thereof the following 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 20. 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
122 similar business name;

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

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

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

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

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

139 (7) conducts any other activities in the commonwealth that are significantly
140 associated with the vendor's ability to establish and maintain a market in the commonwealth for
141 the 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 21. 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:- The excise
147 shall be paid by every vendor engaged in business in the commonwealth to the commissioner at
148 the time provided for filing the return required by section 16 of chapter 62C.

149 SECTION 22. 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 23. Section 1 of chapter 74, as so appearing, is hereby amended by striking
153 lines 43 to 44, inclusive, and inserting in place thereof the following section:-

154 "Service programs", the preparation of students in occupational areas such as hotel and
155 lodging, cosmetology, child care or any service occupation that by its nature is characterized as

156 being a service, professional or non-professional. Such programs shall be in compliance with the
157 program approval criteria regulations published by the state board.

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

161 “Low income community”, a municipality where the median household income is 65
162 percent or less than the statewide household median income. In the case of a municipality with
163 50,000 residents or more, low income community shall mean a geographically contiguous,
164 historically recognized neighborhood of 10,000-50,000 residents.

165 “Minority business enterprise”, as used in this chapter shall be defined as it is in Section
166 40 of Chapter 23A.

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

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

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

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

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

189 (e) It shall be the goal of the Commonwealth that job creation on state-funded
190 construction contracts be targeted to members of the community in which a project is physically

191 located and that the workforce on that project reflect the demographic diversity of the host
192 community, when construction projects are located in low income communities.

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

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

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

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

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

206 Section 44N. Data collection and disclosure

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

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

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

224 SECTION 30. Notwithstanding section 14 of chapter 151A of the General Laws, the
225 experience rate of an employer qualifying therefor under subsection (b) of said section 14 of said
226 chapter 151A shall be the rate which appears in column "E" in clause (1) of subsection (i) of said
227 section 14 of said chapter 151A for calendar year 2013, and beginning on January 1, 2014, each
228 employer liable to pay a contribution under subsection (i) of section 14 shall also pay, in the
229 same manner and at the same times as the commissioner prescribes for the contribution required
230 by said section 14, a workforce development contribution. This contribution shall be set, to the
231 extent consistent with federal law, by the commissioner at a rate per employer so that the total
232 amount of said contributions by December 31, 2014 substantially equals \$20,000,000.00. The
233 Commissioner shall deposit the proceeds of said workforce development contributions in the
234 Workforce Competitiveness Trust Fund, established by section 2WWW of chapter 29.

235 SECTION 31. There is hereby established a commission on vocational-technical
236 education in the twenty first century, to investigate and study the feasibility of authorizing public
237 vocational-technical high schools to award post-secondary associates degrees. The commission
238 shall consist of 14 members: the secretary of education or the secretary's designee who shall
239 serve as chair of the commission; 2 members of the house of representatives, to be appointed by
240 the speaker of the house; 2 members of the senate, to be appointed by the senate president; 4
241 members to be appointed by the Massachusetts Association of Vocational Administrators; 3
242 individuals to be appointed by the governor; the commissioner of higher education or a designee;
243 and the commissioner of workforce development or a designee. The commission shall report to
244 the general court the results of its investigation and study and its recommendations, if any,
245 together with any drafts of legislation necessary to carry out such recommendations, by filing the
246 same with the clerks of the senate and house who shall forward the same to the chairs of the joint
247 committee on education on or before December 31, 2013.