HOUSE DOCKET, NO. 2165 FILED ON: 1/15/2015

HOUSE . . . . . No. 1762

The Commonwealth of Massachusetts

PRESENTED BY:

David M. Rogers

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 creating a living wage for employees and contracted employees of the Commonwealth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
David M. Rogers	*24th Middlesex*
Denise Provost	*27th Middlesex*
Jason M. Lewis	*Fifth Middlesex*
Colleen M. Garry	*36th Middlesex*
Jay D. Livingstone	*8th Suffolk*
Christine P. Barber	*34th Middlesex*
Michael D. Brady	*Second Plymouth and Bristol*
Gailanne M. Cariddi	*1st Berkshire*
Claire D. Cronin	*11th Plymouth*
Daniel Cullinane	*12th Suffolk*
Marjorie C. Decker	*25th Middlesex*
Michelle M. DuBois	*10th Plymouth*
James B. Eldridge	*Middlesex and Worcester*
Jonathan Hecht	*29th Middlesex*
Patricia D. Jehlen	*Second Middlesex*
Mary S. Keefe	*15th Worcester*
James M. Murphy	*4th Norfolk*
Thomas M. Petrolati	*7th Hampden*

Frank I. Smizik	*15th Norfolk*
Thomas M. Stanley	*9th Middlesex*
Ellen Story	*3rd Hampshire*
Benjamin Swan	*11th Hampden*
Steven Ultrino	*33rd Middlesex*
John C. Velis	*4th Hampden*
Chris Walsh	*6th Middlesex*

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HOUSE . . . . . No. 1762

By Mr. Rogers of Cambridge, a petition (accompanied by bill, House, No. 1762) of David M. Rogers and others for the establishment of a living minimum wage for employees and contracted employees of the Commonwealth. Labor and Workforce Development.

The Commonwealth of Massachusetts

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

An Act creating a living wage for employees and contracted employees of the Commonwealth.

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

1 The General Laws are hereby amended by inserting after chapter 151F the following
2 chapter:

3 Chapter 151G

4 LIVING WAGE LAW

5 Section 1. Definitions

6 As used in this chapter, the following words shall, unless the context clearly requires
7 otherwise, have the following meanings:-

8 "Commissioner", the director of the department of labor standards.

9 "Covered Vendor", means any entity who has been awarded a service contract or
10 subcontract with the employer who has been awarded a service contract or subcontract with the
11 “employer” as defined in this section.

12 "Covered Employee", any person employed by a covered vendor who directly expends or
13 would directly expend his or her time on the service contract with the employer, as defined in
14 this act.

15

16 “Department”, the department of labor standards.

17 “Employee”, any person employed by the “employer” as defined in this section,
18 excluding elected officials, appointed officials, members of any board or commission, members
19 of the militia or national guard.

20 “Employer”, a state authority, state agency, or state department as defined in section 1 of
21 chapter 29

22 “Living Wage”, a wage equal to the levels established in section 3 of this chapter.

23 Section 2. Exemptions

24 This Act shall apply to all covered vendors as defined excluding:

25 a. Construction contracts that are subject to the state prevailing wage law; and

26 b. Work- study or cooperative educational programs; provided that the assistance or
27 contract is for stipends to students in the programs.

28 The Covered Vendor shall submit an affidavit to the Secretary of Labor and Workforce
29 Development on July 1 of each year, certifying compliance with this act.

30 Section 3. Living Wage Payment to Employees

31 a. Covered vendors shall pay no less than the living wage to covered employees.

32 b. The living wage shall be calculated on an hourly basis and shall be no less than
33 $15.00 from July 1, 2016 and shall be subject to adjustment each year on July 1 as follows:

34 i. To the hourly rate which at forty hours of work a week for fifty weeks a year
35 would be equal to but not less than the poverty threshold for a family of four as published by the
36 United States Department of Health and Human Services; or

37 ii. In proportion to the increase at the immediately preceding December 31 over the
38 year earlier level of the annual average consumer price index for all urban consumers (CPI-U)
39 Boston-Lawrence-Salem, MA-NH; Barnstable Town, MA; Leominster-Fitchburg-Gardner, MA;
40 New Bedford, MA; Pittsfield, MA; Providence-Fall River-Warwick, RI-MA; Springfield, MA-
41 CT; Worcester, MA-CT as published by the Bureau of Labor Statistics, United States
42 Department of Labor applied to $15.00; or

43 iii. 110% of the federal or state minimum wage; or

44 iv. Whichever of the foregoing is highest.

45 Section 4. Duties of Covered Vendors

46 a. All covered vendors shall provide each covered employee with a fact sheet about
47 this act and shall post a notice about the act in a conspicuous location visible to all employees.

48 The fact sheet and poster shall be provided to the employer and covered vendor by the
49 department and shall include:

50 i. Notice of the living wage amount;

51 ii. A summary of the provisions of this act;

52 iii. A description of the enforcement provisions of the act;

53 iv. The name, address, and phone number of a person designated by the employer or
54 covered vendor to which complaints of noncompliance with this act should be directed.

55 b. Each covered vendor shall maintain payrolls for all covered employees and basic
56 records relating thereto for a period of three years. The records shall contain the name and
57 address of each covered employee, the job title and classification, the number of hours worked
58 each day, the gross wages, deductions made, actual wages paid, a copy of the social security
59 returns, and evidence of payment thereof, a record of fringe benefit payments including
60 contributions to approved plans, funds or programs and/or additional cash payments, and such
61 other data as may be required by the contracting department from time to time.

62 Each employer or covered vendor shall permit representatives of the department to
63 observe work being performed upon the work site, to interview employees and to examine the
64 books and records relating to the payrolls being investigated.

65 Section 5. Vendor Agreements.

66 At the time of signing a service contract with the employer or subcontract with a covered
67 vendor, the contract must include a written commitment by the covered vendor to pay all covered

68 employees not less than the living wage, subject to adjustment each July 1, and to comply with
69 the provisions of this act;

70 Section 6. Enforcement Powers.

71 If necessary for the enforcement of this act, the department may require the attendance
72 and testimony of witnesses and production of books, papers, records and documents relating to
73 payroll records necessary for hearing, investigations, and proceedings. The department shall
74 solicit the attorney general to enforce these provisions.

75 Section 7. Complaint Procedures and Investigations.

76 a. Each employer or covered vendor shall permit any duly authorized officer or
77 employee of the department or of the attorney general to question any covered or non-covered
78 employee of such employer in the place of employment, and during work hours in respect to the
79 wages paid to and the hours worked by employees.

80 b. A covered employee who believes that his or her employer is not complying with
81 requirements of this act, may file a complaint with the department. Complaints by covered or
82 non-covered employees of alleged violations may be made at any time. Statements written or
83 oral, made by a covered or non-covered employee, shall be treated as confidential and shall not
84 be disclosed to the covered vendor without the consent of the employee.

85 c. A complaint of non-compliance with this act may be filed by any person with the
86 department, which shall provide a copy of the complaint to each covered vendor against whom
87 the complaint is made within five business days.

88 d. Discrimination against covered employees barred. A covered vendor shall be
89 considered to be in violation of this chapter if it:

90 i. Reduces the compensation of an employee ; or

91 ii. Discriminates against any covered or non-covered employee for making a complaint to
92 the department, otherwise asserting his or her rights under this act, participating in any of its
93 proceedings, or using any civil remedies to enforce his or her rights under the chapter.

94 e. The designated department shall investigate allegations of retaliation or
95 discrimination and shall, if found to be true, after notice and a hearing order appropriate relief to
96 the employee or person and penalties for the covered vendor and may suspend the contract or
97 order the service contractor to suspend the subcontract.

98 f. The department shall investigate all complaints of non-compliance. Investigations
99 may include routine reviews, spot checks, and investigations pursuant to complaints. The
100 department shall have the responsibility to examine promptly all payrolls for compliance upon
101 receiving a complaint, in furtherance of any investigation.

102 Section 8. Non-Compliance.

103 If the department finds evidence that the covered vendor is not in compliance or has
104 violated any of the provisions of this act, the department shall order such remedial measures as
105 required to ensure compliance, as outlined in section 9 of this chapter.

106 Section 9. Penalties and Remedies.

107 The commissioner or the attorney general, or their authorized representatives, shall have
108 full power and authority:

109 a. To investigate and ascertain the wages of covered employees in the
110 commonwealth;

111 b. To enter the place of business or employment of the employer of a covered
112 employee, for the purpose of examining, inspecting and making a transcript of any and all books,
113 registers, pay-rolls, and other records of any employer of persons that in any way appertain to or
114 have a bearing upon the question of wages of any such persons and for the purpose of
115 ascertaining whether the orders of the commissioner or the attorney general have been and are
116 being complied with; and

117 c. To require from such employer full and correct statements in writing when the
118 commissioner or the attorney general, or their authorized representatives, deem necessary, of the
119 wages paid to all covered employees in his employ, such statements to be under oath or
120 accompanied by a written declaration that they are made under the penalties of perjury.

121 d. If a covered employee is paid by an employer or covered vendor less than the
122 living wage, the covered employee may institute and prosecute in his own name and on his own
123 behalf, or for himself and for others similarly situated, a civil action for injunctive relief, for any
124 damages incurred and for the full amount of the living wages less any amount actually paid to
125 him by the employer or covered vendor. An agreement between the covered employee and the
126 employer to work for less than the living wage shall not be a defense to such action. An
127 employee so aggrieved who prevails in such an action shall be awarded treble damages, as
128 liquidated damages, for any loss of living wage and shall also be awarded the costs of the
129 litigation and reasonable attorneys' fees. At the request of any covered employee paid less than
130 the living wage to which he or she is entitled the attorney general may take an assignment of

131 such wage claim in trust for the assigning covered employee and may bring any legal action
132 necessary to collect such claim, and the employer shall be required to pay the costs and such
133 reasonable attorney's fees as may be allowed by the court. The attorney general shall not be
134 required to pay a filing fee in connection with any such action.

135 e. Failure to comply with the provisions of this act constitutes a breach of contract
136 and such breach may result in withholding of payments and/or termination, cancellation or
137 suspension of the contract in whole or in part. Violations may also render the covered vendor
138 ineligible for future contracts with the Commonwealth for three years or until all penalties and
139 restitution have been paid in full.

140 Section 10. Local Option.

141 This chapter shall take effect in a city or town upon its acceptance in the following
142 manner: in a city having a Plan D or Plan E charter by majority vote of its city council; in any
143 other city by vote of its city council, approved by the mayor; in a town by vote of the board of
144 selectmen.

145 Section 11. Waiver.

146 Requirements of this chapter may be waived by the written terms of a bona fide
147 collective bargaining agreement, provided that this chapter is expressly referenced in the
148 agreement, and that the agreement sets forth in clear and unambiguous terms the desire of all
149 parties to waive some or all of the requirements of this chapter.