HOUSE DOCKET, NO. 2946 FILED ON: 1/21/2011

HOUSE . . . . . No. 2565

The Commonwealth of Massachusetts

PRESENTED BY:

Carl M. Sciortino, Jr.

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 efficiency and transparency in economic development .

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Carl M. Sciortino, Jr.	*34th Middlesex*
George T. Ross	*2nd Bristol*
Ruth B. Balser	*12th Middlesex*
James J. Dwyer	*30th Middlesex*
Martha M. Walz	*8th Suffolk*
Alice K. Wolf	*25th Middlesex*
Timothy J. Toomey, Jr.	*26th Middlesex*
Stephen L. DiNatale	*3rd Worcester*
Peter V. Kocot	*1st Hampshire*
David B. Sullivan	*6th Bristol*
Geoff Diehl	*7th Plymouth*
Thomas M. Stanley	*9th Middlesex*
Frank I. Smizik	*15th Norfolk*
David Paul Linsky	*5th Middlesex*
Jonathan Hecht	*29th Middlesex*
Michael D. Brady	*9th Plymouth*
Stephen Kulik	*1st Franklin*
Jennifer E. Benson	*37th Middlesex*

Sheila C. Harrington	*1st Middlesex*
Jason M. Lewis	*31st Middlesex*
Elizabeth A. Malia	*11th Suffolk*
Walter F. Timilty	*7th Norfolk*
Denise Provost	*27th Middlesex*
James B. Eldridge	
Cory Atkins	*14th Middlesex*
Carolyn C. Dykema	*8th Middlesex*
Kevin J. Kuros	*8th Worcester*
Antonio F. D. Cabral	*13th Bristol*
Cleon H. Turner	*1st Barnstable*
Denise Andrews	*2nd Franklin*
Christine E. Canavan	*10th Plymouth*
Benjamin Swan	*11th Hampden*
Kevin J. Murphy	*18th Middlesex*
James Arciero	*2nd Middlesex*
Kate Hogan	*3rd Middlesex*
Kay Khan	*11th Middlesex*
Angelo M. Scaccia	*14th Suffolk*
William N. Brownsberger	

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By Mr. Sciortino of Medford, a petition (accompanied by bill, House, No. 2565) of Carl M. Sciortino, Jr. and others for legislation to promote efficiency and transparency in economic development through the utilization of tax credits and other incentives. Revenue.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act to promote efficiency and transparency in economic development .

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. The General laws are hereby amended by inserting after Chapter 30b:-

Chapter 30C. Economic Development, Transparency and Fiscal Accountability

Section 1. As used in Chapter 30C, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

“Corporate parent" means any person, association, corporation, joint venture, partnership, or other entity, that owns or controls 50 percent or more of a recipient corporation.

"Date of subsidy” means the date that a granting body provides the initial monetary value of a development subsidy to a recipient corporation provided, however, that where the subsidy is for the installation of new equipment, such date shall be the date the corporation puts the equipment into service and provided, further, that where the subsidy is for improvements to property, such date shall be the date the improvements are finished, or the date the corporation occupies the property, whichever is earlier.

13 "Development subsidy" means any expenditure of public funds with a value of at least
14 $25,000.00 for the purpose of stimulating economic development within the Commonwealth,
15 including but not limited to bonds, grants, loans, loan guarantees, enterprise zones,
16 empowerment zones, tax increment financing, grants, fee waivers, land price subsidies, matching
17 funds, tax abatements, tax exemptions, and tax credits.

18 "Full-time job" means a job in which an individual is employed by a recipient
19 corporation for at least 35 hours per week.

20 "Granting body" means any agency, board, office, public benefit corporation or authority
21 of the Commonwealth or a local government unit that provides a development subsidy.

22 "Local government unit" means an agency, board, commission, office, public benefit
23 corporation, or public authority of a political subdivision of the Commonwealth.

24 "New Employee" means a full-time employee who represents a net increase in the
25 number of individuals employed by the recipient corporation in the Commonwealth. "New
26 employee" does not include an employee who performs a job that was previously performed by
27 another employee of the recipient corporation if that job existed for at least 6 months before
28 hiring the employee.

29 "Part-time job" means a job in which an individual is employed by a recipient
30 corporation for less than 35 hours per week.

31 "Permanent Job" means a job that is not scheduled to terminate at the completion of a
32 discrete project.

33 "Project site" means the site of a project for which any development subsidy is provided.

34 "Property-taxing entity" means any entity that levies taxes upon real or personal property.

35 “Recipient corporation” means any person, association, corporation, joint venture,
36 partnership or other entity that receives a development subsidy.

37 “Searchable Website” means the website defined in Section 14C (a) of Chapter 7 of the
38 Massachusetts General Laws and administered by the Secretary of Administration and Finance
39 that allows the public at no cost to search for, obtain and aggregate state spending and revenue
40 information.

41 "Small business" means a corporation whose corporate parent, and all subsidiaries
42 thereof, that employed fewer than twenty full-time employees or had total gross receipts of less
43 than one million dollars during the calendar year.

44 “State” means an agency, board, commission, office, public benefit corporation or public
45 benefit authority of the Commonwealth.

46 "Subsidy value” means the face value of any and all development subsidies provided to a
47 recipient corporation.

48 “Temporary job” means a job in which an individual is hired for a season or for a limited
49 period of time.

50 Section 2. Unified Economic Development Budget

51 (a) The Massachusetts Department of Revenue shall submit an annual Unified Economic
52 Development Budget to the Legislature no later than three months after the end of the
53 Commonwealth’s fiscal year. The report shall present all types of expenditures for economic
54 development during the prior fiscal year, including but not limited to:

55 (i) The amount of uncollected state tax revenues resulting from every corporate tax credit,
56 abatement, exemption and reduction provided by the Commonwealth's or a local governmental
57 unit including but not limited to gross receipts, income, sales, use, raw materials, excise,
58 property, utility, and inventory taxes.

59 (ii) The name of each corporate taxpayer which claimed any tax credit, abatement,
60 exemption or reduction under subdivision (i) of any value equal to or greater than $5,000,
61 together with the dollar amount received by each such corporation.

62 (iii) Any tax credit, abatement, exemption or reduction received by a corporation of less
63 than $5,000 each shall not be itemized. The Department of Revenue shall report an aggregate
64 dollar amount of such expenditures and the number of companies so aggregated for each tax
65 expenditure.

66 (iv) All state appropriated expenditures for economic development, including line-item
67 budgets for every state-funded entity concerned with economic development, including but not
68 limited to, Executive Office of Housing and Economic Development, Massachusetts Marketing
69 Partnership, Massachusetts Growth Capital Corporation, Massachusetts Office of Business
70 Development, Massachusetts Office of International Trade and Investment, Office of Small
71 Business & Entrepreneurship, Seaport Advisory Council, Department of Housing and
72 Community Development, Office of Indian Affairs, Department of Consumer Affairs and
73 Business Regulation, Division of Insurance, Division of Banks, State Racing Commission,
74 Division of Professional Licensure, Division of Standards, Department of Revenue, Department
75 of Telecommunications and Cable, Executive Office of Labor and Workforce Development,
76 Department of Workforce Development, Commonwealth Corporation, Division of Apprentice

77 Training, Division of Career Services, Division of Unemployment Assistance, Department of
78 Labor, Division of Occupational Safety, Labor Relations Council, Division of Labor Relations,
79 Joint Labor Management Committee, Division of Industrial Accidents, Workers Compensation
80 Advisory Council, Massachusetts Aeronautics Commission, Affirmative Market Program,
81 Massachusetts Dept. of Agricultural Resources, BDC Capital, Community Economic
82 Development Assistance Corporation, Massachusetts Office of International Trade and
83 Investment, Massachusetts Development Finance Agency, Massachusetts Export Center,
84 Massachusetts Small Business Development Center Network, State Office of Minority and
85 Women Business Assistance, Office of Technical Assistance and Technology, Massachusetts
86 Technology Collaborative, Massachusetts Life Science Center.

87 (v) The Department of Revenue shall annually compile and publish all of the data
88 contained in the reports required under paragraph (a) in both written and electronic form. The
89 information in the report shall be included as part of the Searchable Website administered by the
90 Secretary of Administration and Finance.

91 Section 3. Unified Reporting of Property Tax Reductions and Abatements

92 (a) Each property-taxing entity shall annually submit a report to the Massachusetts
93 Department of Revenue regarding any real property in the entity's jurisdiction that has received a
94 development subsidy of at least $5,000 in the form of a property tax abatement or reduction
95 during the fiscal year. The report shall contain information including but not limited to: the name
96 of the property owner; the address of the property; the start and end dates of the property tax
97 reduction or abatement; the schedule of the tax reduction; each tax abatement, reduction and

98 exemption for the property; and the amount of property tax revenue not paid to the taxing entity
99 as a result of the reduction or abatement.

100 (b) Each property-taxing entity shall also submit a report to the Department of Revenue
101 setting forth the total property tax revenue not paid to such entity during the fiscal year as a result
102 of all property tax reductions and abatements in the entity's jurisdiction.

103 (c) The reports required under paragraphs (a) and (b) of this section shall be prepared on
104 two forms prepared by the Department, and shall be submitted to the Department of Revenue by
105 the property- taxing entity no later than three months after the end of the fiscal year.

106 (d) The Department of Revenue shall annually compile and publish all of the data
107 contained in the reports required under paragraphs (a) and (b) in both written and electronic
108 form. The information in the report shall be included as part of the Searchable Website
109 administered by the Secretary of Administration and Finance.

110 (e) If a property-taxing entity fails to submit its reports to the Department or Revenue
111 within the prescribed time, the Department shall notify the Comptroller of the Commonwealth,
112 whereupon the Comptroller shall withhold further payments of any development subsidy to the
113 delinquent entity until the entity files its reports with the Department.

114 Section 4. Application for Economic Development Subsidies

115 (a) Each granting body, together with the applicant for a development subsidy, shall
116 complete an application for the subsidy on a form prepared by the Executive Office of Housing
117 and Economic Development. The information required on the application shall include the
118 following:

119 (i) An application tracking number for the granting agency and the project;

120 (ii) The name, street and mailing address, and phone number of the chief officer of the
121 granting body;

122 (iii) The name, street and mailing address, and phone number of the chief officer of the
123 applicant's corporate parent;

124 (iv) The name, street and mailing address, and phone number of the chief officer of the
125 applicant;

126 (v) The street address of the project site;

127 (vi) The three-digit North American Industry Classification System number of the project
128 site;

129 (vii) The total number of individuals employed by the applicant at the project site on the
130 date of the application, broken down by full-time, part-time, and temporary positions;

131 (viii) The total number of individuals employed in the Commonwealth by the applicant's
132 corporate parent, and all subsidiaries thereof, as of December 31 of the prior fiscal year, broken
133 down by full-time, part-time and temporary positions;

134 (ix) The development subsidy or subsidies being applied for with the granting body, and
135 the value of such subsidy or subsidies;

136 (x) The number of new jobs to be created by the applicant at the project site, broken
137 down by full-time, part-time and temporary positions;

138 (xi) The average hourly wage to be paid to all current and new employees at the project
139 site, broken down by full-time, part-time and temporary positions, and further broken down by
140 wage groups as follows: $8.00 or less an hour, $8.01 to $9.00 an hour, $9.01 to $10.00 an hour,
141 $10.01 to $11.00 an hour, $11.01 to $12.00 an hour, $12.01 to $13.00 an hour, $13.01 to $14.00
142 an hour, and $14.01 to $15.00 an hour, $15.01 to $16.00 an hour, $17.01 to $18.00 an hour,
143 $18.01 to $19.00 an hour, $19.01 to $20.00 an hour, $20.01 to $21.00 and hour, $21.01 to $22.00
144 and hour, $22.01 to $23.00 an hour, $23.01 to $24.00 an hour, $24.01 to $25.00 and hour, $25.01
145 to $30.00 an hour, $30.01 to $40.00 an hour, $40.01 to $50.00 an hour and $50.01 or more per
146 hour;

147 (xii) For project sites located in a Metropolitan Statistical Area, as defined by the federal
148 Office of Management and Budget, the average hourly wage paid to non-managerial employees
149 in the Commonwealth for the industries involved at the project, as established by the United
150 States Bureau of Labor Statistics;

151 (xiii) For project sites located outside of Metropolitan Statistical Areas, the average
152 weekly wage paid to non-managerial employees in the county for industries involved at the
153 project, as established by the United States Department of Commerce;

154 (xiv) The type and amount of health care coverage to be provided by the applicant within
155 ninety days of commencement of employment at the project site, including any costs to be borne
156 by the employees;

157 (xv) A list of all development subsidies which the applicant is requesting and the name of
158 any other granting body from which such subsidies are sought;

159 (xvi) The value of any additional private investment to be committed to this project;

160 (xvi) A statement as to whether the development subsidy may reduce employment at any
161 other site controlled by the applicant or its corporate parent, within or without of the
162 Commonwealth, resulting from automation, merger, acquisition, corporate restructuring or other
163 business activity;

164 (xvii) A certification by the chief officer of the applicant as to the accuracy of the
165 application.

166 (1) If the granting body shall approve the application, it shall send a copy to the
167 Executive Office of Housing and Economic Development within fifteen days of such approval.
168 If the application is not approved, the granting body shall retain the application in its records.

169 Section. 5 Reports

170 (a) Annual reports

171 (i) Each granting body shall file a progress report with the Executive Office of Housing
172 and Economic Development for each project for which a development subsidy has been granted,
173 no later than February 1 each year. The report shall include the following information:-

174 (1) The application tracking number;

175 (2) The name, street and mailing addresses, phone number and chief officer of the
176 granting body;

177 (3) The name, street and mailing addresses, phone number, and chief officer of the
178 recipient corporation;

179 (4) The value and source of each subsidy, including TIF, annually and cumulative;

180 (5) A list of all other development subsidies which the applicant has been granted by state
181 or local agencies within the Commonwealth.

182 (i) Subsidies granted over a period of time, including but not limited to tax increment
183 financing agreements, shall include both the value of the annual subsidy and the estimated
184 cumulative total for each subsequent year.

185 (6) The value of committed private investment and the value of the actual private
186 investment;

187 (7) A summary of the number of jobs committed, created, and lost, broken down by full-
188 time, part- time and temporary positions, and by wage groups.

189 (8) The type and amount of health care coverage provided to the employees at the project
190 site, including any costs borne by the employees;

191 (9) The comparison of the total employment in the Commonwealth by the recipient's
192 corporate parent on the date of the application and the date of the report, broken down by full-
193 time, part-time and temporary positions;

194 (10) A statement as to whether the use of the development subsidy during the previous
195 fiscal year has reduced employment at any other site controlled by the recipient corporation or its
196 corporate parent, within or without of the Commonwealth as a result of automation, merger,
197 acquisition, corporate restructuring or other business activity;

198 (11) A signed certification by the chief officer of the recipient corporation as to the
199 accuracy of the progress report;

200 (ii) On all subsequent annual progress reports, the granting body shall indicate whether
201 the recipient corporation is still in compliance with its job creation, wage and benefit goals, and
202 whether the corporate parent is still in compliance with its state employment requirement;

203 (iii) Granting bodies and recipient corporations shall file annual progress reports for the
204 duration of the subsidy, or not less than five years, whichever period is greater.

205 (b) Two-Year Report

206 (i) No later than fifteen days after the second anniversary of the date of subsidy, the
207 granting body shall file with the Executive Office of Housing and Economic Development a two-
208 year progress report including the same information as required under section 5(a) The recipient
209 corporation shall certify as to the accuracy of such report.

210 (ii) The granting body shall state in the two-year report whether the recipient corporation
211 has achieved its job creation, wage and benefit goals, and whether the corporate parent has
212 maintained 90% of its employment in the Commonwealth.

213 (c) The Executive Office of Housing and Economic Development (EOHED) shall
214 compile and publish all data from the progress reports in both written and electronic form,
215 including to a reporting web site maintained by the Executive Office of Housing and Economic
216 Development. The information in the reports shall be included as part of the Searchable Website
217 administered by the Secretary of Administration and Finance.

218 (d) The granting body and the Executive Office of Housing and Economic Development
219 shall have access at all reasonable times to the project site and the records of the recipient
220 corporation in order to monitor the project and to prepare progress reports. The Executive Office

221 of Housing and Economic Development shall commit the resources necessary to audit
222 compliance and verify the accuracy of progress reports.

223 (e) A recipient corporation that fails to provide the granting body with the information or
224 access required under paragraphs (1) and (2) of this section shall be subject to a fine of not less
225 than $500 per day to commence within ten working days after the February 1 deadline, and of
226 not less than $1,000 per day to commence twenty days after such deadline.

227 Section. 6 Subsidy Limit and Job Quality Standards

228 (a) A granting body shall not grant award a development subsidy if the cost per
229 permanent, full-time job is greater than $35,000.00. Such cost shall be determined by dividing
230 the amount of the subsidy by the number of permanent, full-time jobs required under the
231 application approved by the granting body.

232 (b) A granting body shall not grant a subsidy to an applicant unless the wages paid to
233 employees at the project site are equal to or exceed 85% of the average wage as established
234 under paragraphs (xii) and (xiii) of section 4, provided, however, that for small businesses, the
235 average wage must equal or exceed 75% of the wages established hereunder. The computation
236 of wages under this section shall only apply to a recipient corporation that provides the health
237 care coverage as approved in its application by the granting body.

238 Section 7. Recapture

239 (a) A recipient corporation shall fulfill its job creation, wage, health care and other
240 benefit requirements for the project site within two years of the date of subsidy. Such recipient

241 shall maintain its wage and benefit goals as long as the subsidy is in effect, or five years,
242 whichever is longer.

243 (b) The corporate parent of a recipient corporation must maintain at least 90% of its
244 employment in the Commonwealth as long as the development subsidy is in effect, or not less
245 than five years, whichever is longer.

246 (c) If the requirements under paragraphs (a) or (b) are not fulfilled, the granting body
247 shall recapture the development subsidy from the recipient corporation as follows:

248 (i) Upon a failure by the recipient corporation to create the required number of jobs or to
249 pay the required wages or benefits, the amount recaptured shall be based on the pro rata amount
250 by which the unfulfilled jobs, wages or benefits bear to the total amount of the development
251 subsidy.

252 (ii) Upon a failure of the corporate parent to maintain 90% of its employment in the
253 Commonwealth, the rate of recapture shall equal twice the percentage by which such
254 employment is less than 90%.

255 (d) The granting body shall provide notice to the recipient corporation of its intent to
256 recapture the development subsidy and state the reasons and amount to be recaptured. The
257 recipient corporation shall remit to the governing body such amount within 60 calendar days of
258 the date of such notice.

259 (e) If a recipient corporation fails to create at least 90% of the required number of jobs or
260 to pay the required wages or benefits for three consecutive calendar years, the granting body
261 shall declare the subsidy null and void, and shall so notify the Executive Office of Housing and

262 Economic Development and the recipient corporation. The recipient corporation shall pay back
263 to the granting body all remaining value of the development subsidy it has not previously repaid
264 within 180 calendar days of the date of the notice of such default.

265 (i) Recipient corporations that have defaulted on their agreement and had their full
266 subsidy recaptured shall be barred from applying for any other economic development subsidy in
267 the Commonwealth for a period not less than 5 years.

268 Section 8. Private Enforcement Action

269 If a granting body fails to enforce any provision of this Act, any individual who paid
270 personal income taxes to the Commonwealth in the calendar year prior to the year in dispute, or
271 any organization representing such taxpayers, shall be entitled to bring a civil action in state
272 court to compel enforcement under this statute. The court shall award reasonable attorney's fees
273 and costs to such prevailing taxpayer or organization.

274 Section 9. Transparency & Public Record Disclosure

275 (a) All records required to be prepared or maintained under this Act, including but
276 not limited to applications, progress reports, audits, recapture notices and any other records or
277 proceedings relating thereto, shall be subject to disclosure under the Commonwealth's Open
278 Records Law and be made available as part of the Searchable Website administered by the
279 Secretary of Administration and Finance.

280 (b) Granting bodies administering discretionary economic development incentive
281 programs, including but not limited to the Economic Assistance Coordinating Council and the
282 Massachusetts Life Sciences Center, shall be required to:

283 (i) Post meeting dates 30 days in advance on the website of the Executive Office of
284 Housing and Economic Development.

285 (ii) Make meeting agendas and supporting materials, including but not limited to the full
286 text of the applications to be considered, publicly available on the website of the Executive
287 Office of Housing and Economic Development at least 2 weeks prior to the meeting.

288 (iii) Make meeting members, votes, and minutes publicly available on the website of the
289 Executive Office of Housing and Economic Development within 24 hours of the meeting.

290 Section 10. Pre-emption

291 Nothing in this chapter shall be read to require or authorize any recipient corporation to
292 reduce wages or benefits established under any collective bargaining agreement or state or
293 federal prevailing wage law.

294 Section 11. Separability

295 If any provision of this Act is determined to be unenforceable in a court of law, such
296 determination shall not affect the validity or enforceability of any other provision of this Act.

297 Section 12. Waivers

298 The Executive Office of Economic Development may waive the subsidy limit and job
299 quality standards described in section 6 upon a finding that there exists significant public policy
300 goals apart from job creation. Thirty days prior to waiving requirements, the Executive Office of
301 Economic Development shall publish its intent to do so on its reporting website with an
302 explanation of the specific public policy goals, why the waiver is necessary to meet the public
303 policy goals and define objective standards by which the public policy goals will be measured.

304 The one and two year progress reports described in section 5 will use these standards to

305 determine whether these public policy goals were met.