SENATE DOCKET, NO. 1596 FILED ON: 1/18/2013

SENATE . . . . . No. 1463

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 passage of the accompanying:

An Act relative to equity in public contracting in honor of Bruce C. Bolling.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Sonia Chang-Diaz	*Second Suffolk*
Linda Dorcena Forry	*12th Suffolk*
James B. Eldridge	*Middlesex and Worcester*
Elizabeth A. Malia	*11th Suffolk*
Mary S. Keefe	*15th Worcester*
Gloria L. Fox	*7th Suffolk*
Antonio F. D. Cabral	*13th Bristol*
Carlos Henriquez	*5th Suffolk*
Russell E. Holmes	*6th Suffolk*
Byron Rushing	*9th Suffolk*
Benjamin Swan	*11th Hampden*
Patricia D. Jehlen	*Second Middlesex*
Martin J. Walsh	*13th Suffolk*
Kevin G. Honan	*17th Suffolk*

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By Ms. Chang-Diaz, a petition (accompanied by bill, Senate, No. 1463) of Sonia Chang-Diaz, Linda Dorcena Forry, James B. Eldridge, Elizabeth A. Malia and other members of the General Court for legislation to create equitable job access. State Administration and Regulatory Oversight.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *1568* OF 2011-2012.]

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act relative to equity in public contracting in honor of Bruce C. Bolling.

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. Chapter 7 of the Generals Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after Section 23B the following section:-

Section 23B ½ Contracting diversity goals

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

19 SECTION 3. Section 14C of Chapter 7 of the General Laws, as appearing in the 2008
20 Official Edition, is hereby amended by inserting after the last paragraph the following
21 paragraphs:-

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

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

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

36 SECTION 4. Section 38F of Chapter 7 of the General Laws, as appearing in the 2008
37 Official Edition, is hereby amended by inserting after the word "project", in line 9, the following
38 text:-

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

41 SECTION 5. Section 1 of Chapter 149 of the General Laws, as appearing in the 2008
42 Official Edition, is hereby amended by inserting after the last paragraph, the following
43 paragraphs:-

44 "Low income community", a municipality where the median household income is 65
45 percent or less than the statewide household median income. In the case of a municipality with
46 50,000 residents or more, low income community shall mean a geographically contiguous,
47 historically recognized neighborhood of 10,000-50,000 residents.

48 "Minority business enterprise", as used in this chapter shall be defined as it is in Section
49 40 of Chapter 23A.

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

52 SECTION 6. Section 44A of Chapter 149 of the General Laws, as appearing in the 2008
53 Official Edition, is hereby amended by striking out lines 12-16, and inserting in its place thereof
54 the following text:-

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

67 SECTION 7. Section 44A ½ in Chapter 149 of the General Laws, as appearing in the
68 2008 Official Edition, is hereby amended by inserting after the last paragraph the following
69 paragraphs:-

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

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

78 SECTION 8. Section 44D ½ of chapter 149 of the Generals Laws as appearing in the
79 2008 Official Edition, is hereby amended by inserting after line 92, the following text:-

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

84 SECTION 9. Section 44D ½ of chapter 149 of the Generals Laws as appearing in the
85 2008 Official Edition, is hereby amended by inserting after line 110, the following text:-

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

89 SECTION 10. Chapter 149 of the Generals Laws is hereby amended by inserting after
90 section 44M the following section:-

91 Section 44N. Data collection and disclosure

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

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

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