SENATE DOCKET, NO. 179 FILED ON: 1/18/2011

SENATE . . . . . No. 968

The Commonwealth of Massachusetts

PRESENTED BY:

James E. Timilty

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 to combat tax and insurance fraud..

PETITION OF:

NAME:	DISTRICT/ADDRESS:
James E. Timilty	
	☐ *[District]*
	☐

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SENATE . . . . . No. 968

By Mr. Timilty, a petition (accompanied by bill, Senate, No. 968) of James E. Timilty for legislation to combat tax and insurance fraud. Labor and Workforce Development.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
SENATE
, NO. *718* OF 2009-2010.]

The Commonwealth of Massachusetts

An Act to combat tax and insurance fraud..

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. Chapter 62B of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by inserting after section 12A the following section: -

Section 12B. Failure to withhold taxes on wages; stop work orders; penalties; liens; actions brought by losing bidders

(1) Whenever the commissioner or his designee determines that an employer who is required to withhold and pay over taxes on wages as provided for by this chapter has failed to withhold and/or pay over such taxes, a stop work order shall be served on said employer, requiring the cessation of all business operations. Such order shall take effect immediately upon its service upon said employer, unless such employer provides evidence, satisfactory to the commissioner or his designee, of having paid any amounts due as a result of having failed to withhold and/or pay over taxes on wages and pays a civil penalty into the commonwealth's general funds in the amount of one hundred dollars per day for each day such employer was not in compliance with this chapter counting the first date of the employer's non-compliance as the first day and date of payment of the penalty herein provided and of production of evidence of payment of all amounts due as a result of having failed to withhold and/or pay over taxes as the final day. The provision of such civil penalties shall not have any effect on any other penalties or remedies that may be available under any other provision of law.

18 (2) Any employer who is aggrieved by the imposition of a stop work order and the
19 imposition of a civil penalty shall have ten days from the date of its service to appeal such order
20 or penalty. Any employer who timely files such appeal shall be granted a hearing by the
21 commissioner or his designee within fourteen days of receipt of appeal. The stop work order
22 shall not be in effect during the pendency of any timely filed appeal. The commissioner shall
23 schedule a hearing on any appeal within seven days of the filing of any appeal. The
24 commissioner shall issue a decision on any appeal within seven days of the date of the hearing.
25 Any stop work order and monetary penalty shall be rescinded if the commissioner or his
26 designee finds at the hearing that the employer has at all times been in compliance with this
27 chapter. If the commissioner or his designee finds at the hearing that the employer did or has not
28 withheld and/or paid over taxes from wages as required by this chapter, the stop work order shall
29 be effective immediately on the conclusion of the hearing and shall remain in effect until such
30 time as the employer provides evidence, satisfactory to the commissioner or his designees, of
31 having made the necessary payment of all amounts due as a result of having failed to withhold
32 and/or pay over taxes and pays a civil penalty into the commonwealth's general funds in the
33 amount of two hundred and fifty dollars per day for each day such employer was not in
34 compliance with this chapter, counting the first date of the employer's non-compliance as the
35 first day and the date of payment of the penalty herein provided and of production of evidence of
36 payment of all amounts due as a result of having failed to withhold taxes as the final day.

37 A stop work order and any monetary penalties assessed by the commissioner after a
38 hearing as authorized in this section shall be final at the expiration of thirty days if no action for
39 judicial review of such decision is commenced pursuant to chapter thirty A. Any person who
40 institutes proceedings for judicial review of the final assessment of a penalty by the
41 commissioner pursuant to this section, shall place the final amount of the assessment in an
42 interest-bearing escrow account in the custody of the clerk/magistrate of the reviewing court. The
43 establishment of such interest-bearing account shall be a condition precedent to the jurisdiction
44 of the reviewing court unless the party demonstrates in a preliminary hearing held within twenty
45 days of the filing of the complaint either the presence of a substantial question for review by the
46 court or an inability to pay. Upon such a demonstration, the court may grant an extension or
47 waiver of the interest-bearing escrow account or may require, in lieu of such account, the posting
48 of a bond payable directly to the Commonwealth in the amount of one hundred and twenty-five
49 per cent of the assessed penalty. If, after judicial review, in the case where the requirement for an
50 escrow account has been waived, and in the case where a bond has been posted, the court affirms
51 the penalty in whole or in part, the penalty assessed by the commissioner shall be paid with
52 interest at the rate set forth in section six C of chapter two hundred and thirty-one. If, after such
53 review in a case where an interest-bearing escrow account has been established, the court affirms
54 the penalty in whole or in part, the penalty shall be paid with accumulated interest from such
55 account. If the court sets aside the penalty the amount placed in such account or the amount
56 posted for such bond shall be repaid together with any interest thereon.

57 (3) Any law enforcement agency in the commonwealth shall, at the request of the
58 commissioner, render any assistance necessary to carry out the provisions of this section,
59 including but not limited to preventing any employee or other persons from remaining at a place
60 of employment or job site after a stop work order has taken effect.

61 (4) Any employee affected by a stop work order pursuant to this section shall be paid at
62 his or her regular rate of pay, but in no event less than the minimum wage as required by state or
63 federal wage and hour laws, whichever is higher, for the first ten days lost pursuant to such order
64 and any time lost pursuant to this section not exceeding ten days shall be considered time worked
65 under the provisions of chapter one hundred and forty-nine.

66 (5) Every state or local licensing agency shall withhold the issuance or renewal of a
67 license or permit to operate a business or to construct buildings in the commonwealth for any
68 applicant who has failed to withhold taxes from wages as required by this chapter, or who is
69 subject to a stop work order. Any employer who is subject to a stop work order shall notify any
70 state or local licensing agency with whom the employer is dealing of the existence of any stop
71 work order. If an employer who is subject to a stop work order fails to so notify the agency and
72 is issued a license or permit, that license or permit shall be deemed void.

73 (6) Neither the commonwealth nor any of its political subdivisions shall enter into any
74 contract for the performance of public work with an employer who is not in compliance with his
75 obligation to withhold and/or pay over taxes from wages as required by this chapter. Any
76 employer who is seeking in any manner a contract for the performance of work from the
77 commonwealth or any of its political subdivisions shall notify the commonwealth or political
78 subdivision of the issuance of any stop work order under this chapter, regardless of whether the
79 stop work order remains in effect. If an employer who is subject to a stop work order that
80 remains in effect fails to so notify the commonwealth or political subdivision and is awarded a
81 contract, that contract shall be deemed void.

82 (7) In addition to being subject to the civil penalties herein provided, an employer who
83 fails to withhold taxes on wages as required by this chapter or knowingly misclassifies
84 employees, to avoid withholding taxes on wages, will be immediately debarred from bidding or
85 participating in any state or municipal funded contracts for a period of three years and shall when
86 applicable be subject to penalties provided for in section fourteen.

87 (8) The fact of issuance of workers compensation insurance to an individual shall not be
88 considered in making a determination of whether the individual is an employee for purposes of
89 section 1 of this chapter, or in making the determination called for by subsection 1 above of
90 whether an employer has failed to withhold and/or pay over taxes on wages as required by this
91 chapter, or in determining whether to serve a stop work order.

92 (9) An employer's failure to comply with his reporting obligations under chapter 62E,
93 section 2, with respect to a newly hired employee or entering into an agreement with a contractor

94 for the performance of services shall constitute prima facie evidence of his failure to withhold
95 and/or pay over taxes on wages as required by this chapter, and such failure to comply with
96 chapter 62E, section 2 shall be sufficient to serve a stop work order.

97 (10) The commissioner or his designee shall possess the power to issue a subpoena to
98 any employer commanding the production within seven days of all payroll and any other
99 business records, or copies thereof, that may be relevant to the determination of whether the
100 employer is in compliance with his obligations under this chapter.

101 (14) The Department of Revenue shall provide the Secretary of Labor and the
102 commissioners of the Department of Industrial Accidents and the Division of Unemployment
103 Assistance or their designees full and immediate access to employer reports and notices
104 submitted in accordance with chapter 62E, section 2 with respect to newly hired employees or
105 entering into agreements with contractors for the performance of services

106 SECTION 2. Chapter 151A of the General Laws, as appearing in the 2004 Official
107 Edition, is hereby amended by inserting after section 47B the following section: -

108 Section 41B. Failure to contribute to the Unemployment Compensation Fund; stop work
109 orders; penalties; liens; actions brought by losing bidders

110 (1) Whenever the Secretary of Labor, the commissioner or the designee of either
111 determines that an employer who is required to contribute to the Unemployment Compensation
112 Fund as provided for by this chapter has failed to do so, a stop work order shall be served on said
113 employer, requiring the cessation of all business operations. Such order shall take effect
114 immediately upon its service upon said employer, unless such employer provides evidence,
115 satisfactory to the commissioner or his designee, of having made full payment of all required
116 contributions and pays a civil penalty into the Unemployment Compensation Fund in the
117 amount of one hundred dollars per day for each day such employer was not in compliance with
118 this chapter counting the first date of the employer's non-compliance as the first day and date of
119 payment of the penalty herein provided and of production of evidence of full payment of all
120 required contributions as the final day. The provision of such civil penalties shall not have any
121 effect on any other penalties or remedies that may be available under any other provision of law.

122 (2) Any employer who is aggrieved by the imposition of a stop work order and the
123 imposition of a civil penalty shall have ten days from the date of its service to appeal such order
124 or penalty. Any employer who timely files such appeal shall be granted a hearing by the
125 commissioner or his designee within fourteen days of receipt of appeal. The stop work order
126 shall not be in effect during the pendency of any timely filed appeal. The commissioner shall
127 schedule a hearing on any appeal within seven days of the filing of any appeal. The
128 commissioner shall issue a decision on any appeal within seven days of the date of the hearing.
129 Any stop work order and monetary penalty shall be rescinded if the commissioner or his
130 designee finds at the hearing that the employer has at all times been in compliance with this

131 chapter. If the commissioner or his designee finds at the hearing that the employer did or has not
132 contributed to the Unemployment Compensation Fund as required by this chapter, the stop work
133 order shall be effective immediately on the conclusion of the hearing and shall remain in effect
134 until such time as the employer provides evidence, satisfactory to the commissioner or his
135 designees, of having made the necessary contributions to the Unemployment Compensation
136 Fund and pays a civil penalty into the Fund in the amount of two hundred and fifty dollars per
137 day for each day such employer was not in compliance with this chapter, counting the first date
138 of the employer's non-compliance as the first day and the date of payment of the penalty herein
139 provided and of production of evidence of full payment of all required contributions as the final
140 day.

141 A stop work order and any monetary penalties assessed by the commissioner after a
142 hearing as authorized in this section shall be final at the expiration of thirty days if no action for
143 judicial review of such decision is commenced pursuant to chapter thirty A. Any person who
144 institutes proceedings for judicial review of the final assessment of a penalty by the
145 commissioner pursuant to this section, shall place the final amount of the assessment in an
146 interest-bearing escrow account in the custody of the clerk/magistrate of the reviewing court. The
147 establishment of such interest-bearing account shall be a condition precedent to the jurisdiction
148 of the reviewing court unless the party demonstrates in a preliminary hearing held within twenty
149 days of the filing of the complaint either the presence of a substantial question for review by the
150 court or an inability to pay. Upon such a demonstration, the court may grant an extension or
151 waiver of the interest-bearing escrow account or may require, in lieu of such account, the posting
152 of a bond payable directly to the Unemployment Compensation Fund in the amount of one
153 hundred and twenty-five per cent of the assessed penalty. If, after judicial review, in the case
154 where the requirement for an escrow account has been waived, and in the case where a bond has
155 been posted, the court affirms the penalty in whole or in part, the penalty assessed by the
156 commissioner shall be paid with interest at the rate set forth in section six C of chapter two
157 hundred and thirty-one. If, after such review in a case where an interest-bearing escrow account
158 has been established, the court affirms the penalty in whole or in part, the penalty shall be paid
159 with accumulated interest from such account. If the court sets aside the penalty the amount
160 placed in such account or the amount posted for such bond shall be repaid together with any
161 interest thereon.

162 (3) Any law enforcement agency in the commonwealth shall, at the request of the
163 commissioner, render any assistance necessary to carry out the provisions of this section,
164 including but not limited to preventing any employee or other persons from remaining at a place
165 of employment or job site after a stop work order has taken effect.

166 (4) Any employee affected by a stop work order pursuant to this section shall be paid at
167 his or her regular rate of pay, but in no event less than the minimum wage as required by state or
168 federal wage and hour laws, whichever is higher, for the first ten days lost pursuant to such order

169 and any time lost pursuant to this section not exceeding ten days shall be considered time worked
170 under the provisions of chapter one hundred and forty-nine.

171 (5) In addition to being subject to the civil penalties herein provided, an employer who
172 fails to contribute to the Unemployment Trust Fund as required by this chapter shall be punished
173 by a fine payable into the commonwealth's general funds of not more than three thousand five
174 hundred dollars or by imprisonment for not more than one year, or both. Failure of an employer,
175 after imposition of such fine or imprisonment, to make the required contributions to the
176 Unemployment Trust Fund under this chapter after notice by the department to do so shall, as to
177 each notice, be deemed a further violation in respect thereof, subject to an additional fine and
178 imprisonment. If such employer is a corporation, the president or treasurer or both shall be liable
179 for said punishment. The commissioner or his designee shall have power to bring complaints
180 against employers, including the president and treasurer of a corporation which is an employer,
181 for violations of the provisions of this subsection, and to prosecute the same, and for such
182 purpose may deputize one or more employees of the department to make and prosecute
183 complaints. Complaints under this subsection shall be brought in the district court in which the
184 principal place of business of such employer is situated, or in the district court in whose district
185 such president or treasurer of a corporation resides.

186 (6) Every state or local licensing agency shall withhold the issuance or renewal of a
187 license or permit to operate a business or to construct buildings in the commonwealth for any
188 applicant who has failed to contribute to the Unemployment Compensation Fund as required by
189 this chapter, or who is subject to a stop work order. Any employer who is subject to a stop work
190 order shall notify any state or local licensing agency with whom the employer is dealing of the
191 existence of any stop work order. If an employer who is subject to a stop work order fails to so
192 notify the agency and is issued a license or permit, that license or permit shall be deemed void.

193 (7) Neither the commonwealth nor any of its political subdivisions shall enter into any
194 contract for the performance of public work with an employer who is not in compliance with its
195 obligation to contribute to the Unemployment Compensation Fund as required by this chapter.
196 Any employer who is seeking in any manner a contract for the performance of work from the
197 commonwealth or any of its political subdivisions shall notify the commonwealth or political
198 subdivision of the issuance of any stop work order under this chapter, regardless of whether the
199 stop work order remains in effect. If an employer who is subject to a stop work order that
200 remains in effect fails to so notify the commonwealth or political subdivision and is awarded a
201 contract, that contract shall be deemed void.

202 (8) Any judgments obtained by the department requiring employer contributions or other
203 payments into the Unemployment Compensation Fund, and any penalties due pursuant to the
204 service of a stop work order under this section shall, until collected, constitute a lien upon the
205 entire interest of the employer, legal or equitable, in any property, real or personal, tangible or
206 intangible; provided, however, that such lien shall be subordinate to claims for unpaid wages and

207 any prior recorded liens; and provided, further, that no lien created by this section shall be valid
208 against a subsequent purchaser or mortgagee in good faith and for value of real or personal
209 property from or of such employer, or against a subsequent attaching creditor, unless, with
210 respect to real estate of the employer, a notice of such lien is recorded in the registry of deeds for
211 the county where such real estate is located, and, with respect to personal property of the
212 employer, said notice is recorded with the clerk of the city or town where such personal property
213 is located. Such lien shall be considered a tax due and owing to the commonwealth, which may
214 be collected through the procedures provided for by chapter 62C.

215 (9) (a) Any person or firm that loses a competitive bid for a contract including but not
216 limited to construction, repair, remodeling, alteration, conversion, modernization, replacement or
217 renovation of a building, roadway or structure may bring an action for damages against another
218 person who is awarded the contract for which the bid was made, if the other person was awarded
219 the contract because of cost advantages achieved by violating the provisions of sections 13 and
220 14 of this chapter or by the deliberate misclassification of employees for the purpose of avoiding
221 contributions to the Unemployment Compensation Fund.

222 (b) A person or firm bringing an action under this section must establish a violation of
223 said subsection or chapters by a preponderance of the evidence. Upon establishing that the
224 violation occurred, the person bringing the action shall recover, as liquidated damages, ten
225 percent of the total amount bid on the contract.

226 (c) An action under this subsection shall be commenced within one year from the date
227 when the contract is awarded.

228 (d) No plaintiff shall be allowed to recover any amounts under this subsection if said
229 plaintiff was in violation of sections 13 and 14 of this chapter at the time of making the bid on
230 the contract.

231 (e) In any action under this section, the prevailing plaintiff shall be entitled to an
232 award of reasonable attorneys fees and costs.

233 (10) In addition to being subject to the civil penalties herein provided, an employer who
234 fails to contribute to the Unemployment Compensation Fund as required by this chapter or
235 knowingly misclassifies employees, to avoid contributions to the Fund, will be immediately
236 debarred from bidding or participating in any state or municipal funded contracts for a period of
237 three years and shall when applicable be subject to penalties provided for in section fourteen.

238 (11) The fact of issuance of workers compensation insurance to an individual shall not be
239 considered in making a determination of whether the individual is performing service in
240 employment for purposes of section 2 of this chapter, or in making the determination called for
241 by subsection 1 above of whether an employer has failed to contribute to the Unemployment

242 Compensation Fund as required by this chapter, or in determining whether to serve a stop work
243 order.

244 (12) An employer's failure to comply with his reporting obligations under chapter 62E,
245 section 2, with respect to a newly hired employee or entering into an agreement with a contractor
246 for the performance of services shall constitute prima facie evidence of his failure to contribute
247 to the Unemployment Compensation Fund as required by this chapter, and such failure to
248 comply with chapter 62E, section 2 shall be sufficient to serve a stop work order.

249 (13) The Secretary of Labor, the commissioner or the designee of either shall possess the
250 power to issue a subpoena to any employer commanding the production within seven days of all
251 payroll and any other business records, or copies thereof, that may be relevant to the
252 determination of whether the employer is in compliance with his obligations under this chapter.

253 (14) The Department of Revenue shall provide the commissioner or his designee full and
254 immediate access to employer reports and notices submitted in accordance with chapter 62E,
255 section 2 with respect to newly hired employees or entering into agreements with contractors for
256 the performance of services .

257 (15) The Secretary of Labor, the commissioner or the designee of either shall refer all
258 determinations of failures to comply with the obligations of this chapter to the Department of
259 Revenue and to the Attorney General for additional enforcement action.

260 SECTION 3. Section 25C of chapter 152 of the General Laws, as appearing in the 2004
261 Official Edition, is hereby amended by striking out subsection (1) and inserting in place thereof
262 the following subsection: -

263 "(1)Whenever the Secretary of Labor, the commissioner or the designee of either
264 determines that an employer who is required to provide for the payment to his employees of the
265 compensation provided for by this chapter has failed to do so, a stop work order shall be served
266 on said employer, requiring the cessation of all business operations. Such order shall take effect
267 immediately upon its service upon said employer, unless such employer provides evidence,
268 satisfactory to the commissioner or his designee, of having secured any necessary insurance or
269 self-insurance and pays a civil penalty into the private employer trust fund in the amount of one
270 hundred dollars per day for each day such employer was not in compliance with this chapter
271 counting the first date of the employer's non-compliance as the first day and date of payment of
272 the penalty herein provided and of production of evidence of insurance or self-insurance as the
273 final day. The provision of such civil penalties shall not have any effect on any other penalties
274 or remedies that may be available under any other provision of law."