

HOUSE No. 2696

PRESENTED BY:

Ann-Margaret Ferrante

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 the definition of fraud in public construction bid laws.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|---------------------------------|--------------------------------|------------------|
| <i>Ann-Margaret Ferrante</i> | <i>5th Essex</i> | <i>1/15/2019</i> |
| <i>Daniel J. Ryan</i> | <i>2nd Suffolk</i> | <i>1/16/2019</i> |
| <i>Steven Ultrino</i> | <i>33rd Middlesex</i> | <i>1/23/2019</i> |
| <i>Frank A. Moran</i> | <i>17th Essex</i> | <i>1/23/2019</i> |
| <i>Timothy R. Whelan</i> | <i>1st Barnstable</i> | <i>1/23/2019</i> |
| <i>Angelo J. Puppolo, Jr.</i> | <i>12th Hampden</i> | <i>1/23/2019</i> |
| <i>Brian W. Murray</i> | <i>10th Worcester</i> | <i>1/23/2019</i> |
| <i>Richard M. Haggerty</i> | <i>30th Middlesex</i> | <i>1/23/2019</i> |
| <i>Daniel Cahill</i> | <i>10th Essex</i> | <i>1/23/2019</i> |
| <i>José F. Tosado</i> | <i>9th Hampden</i> | <i>1/24/2019</i> |
| <i>Louis L. Kafka</i> | <i>8th Norfolk</i> | <i>1/24/2019</i> |
| <i>Ruth B. Balsler</i> | <i>12th Middlesex</i> | <i>1/24/2019</i> |
| <i>David Paul Linsky</i> | <i>5th Middlesex</i> | <i>1/24/2019</i> |
| <i>Tram T. Nguyen</i> | <i>18th Essex</i> | <i>1/26/2019</i> |
| <i>Tommy Vitolo</i> | <i>15th Norfolk</i> | <i>1/26/2019</i> |
| <i>Joseph W. McGonagle, Jr.</i> | <i>28th Middlesex</i> | <i>1/28/2019</i> |
| <i>Tackey Chan</i> | <i>2nd Norfolk</i> | <i>1/28/2019</i> |
| <i>Mike Connolly</i> | <i>26th Middlesex</i> | <i>1/28/2019</i> |
| <i>Adrian C. Madaro</i> | <i>1st Suffolk</i> | <i>1/28/2019</i> |
| <i>James B. Eldridge</i> | <i>Middlesex and Worcester</i> | <i>1/28/2019</i> |
| <i>Stephan Hay</i> | <i>3rd Worcester</i> | <i>1/28/2019</i> |
| <i>Christina A. Minicucci</i> | <i>14th Essex</i> | <i>1/29/2019</i> |
| <i>Patricia A. Haddad</i> | <i>5th Bristol</i> | <i>1/29/2019</i> |
| <i>David M. Rogers</i> | <i>24th Middlesex</i> | <i>1/29/2019</i> |

| | | |
|------------------------------------|------------------------------------|------------------|
| <i>Alice Hanlon Peisch</i> | <i>14th Norfolk</i> | <i>1/29/2019</i> |
| <i>Carole A. Fiola</i> | <i>6th Bristol</i> | <i>1/29/2019</i> |
| <i>Christopher Hendricks</i> | <i>11th Bristol</i> | <i>1/29/2019</i> |
| <i>John C. Velis</i> | <i>4th Hampden</i> | <i>1/29/2019</i> |
| <i>Smitty Pignatelli</i> | <i>4th Berkshire</i> | <i>1/29/2019</i> |
| <i>Thomas P. Walsh</i> | <i>12th Essex</i> | <i>1/30/2019</i> |
| <i>Daniel M. Donahue</i> | <i>16th Worcester</i> | <i>1/30/2019</i> |
| <i>Rady Mom</i> | <i>18th Middlesex</i> | <i>1/30/2019</i> |
| <i>Lori A. Ehrlich</i> | <i>8th Essex</i> | <i>1/30/2019</i> |
| <i>Mathew J. Muratore</i> | <i>1st Plymouth</i> | <i>1/30/2019</i> |
| <i>Carmine Lawrence Gentile</i> | <i>13th Middlesex</i> | <i>1/30/2019</i> |
| <i>Josh S. Cutler</i> | <i>6th Plymouth</i> | <i>1/30/2019</i> |
| <i>David F. DeCoste</i> | <i>5th Plymouth</i> | <i>1/30/2019</i> |
| <i>Bruce E. Tarr</i> | <i>First Essex and Middlesex</i> | <i>1/30/2019</i> |
| <i>Bud L. Williams</i> | <i>11th Hampden</i> | <i>1/31/2019</i> |
| <i>Mary S. Keefe</i> | <i>15th Worcester</i> | <i>1/31/2019</i> |
| <i>Joseph F. Wagner</i> | <i>8th Hampden</i> | <i>1/31/2019</i> |
| <i>Harold P. Naughton, Jr.</i> | <i>12th Worcester</i> | <i>1/31/2019</i> |
| <i>Denise C. Garlick</i> | <i>13th Norfolk</i> | <i>1/31/2019</i> |
| <i>Antonio F. D. Cabral</i> | <i>13th Bristol</i> | <i>1/31/2019</i> |
| <i>Kate Hogan</i> | <i>3rd Middlesex</i> | <i>1/31/2019</i> |
| <i>Marc R. Pacheco</i> | <i>First Plymouth and Bristol</i> | <i>1/31/2019</i> |
| <i>Brendan P. Crighton</i> | <i>Third Essex</i> | <i>1/31/2019</i> |
| <i>Patrick M. O'Connor</i> | <i>Plymouth and Norfolk</i> | <i>1/31/2019</i> |
| <i>Michael D. Brady</i> | <i>Second Plymouth and Bristol</i> | <i>1/31/2019</i> |
| <i>Jack Patrick Lewis</i> | <i>7th Middlesex</i> | <i>1/31/2019</i> |
| <i>Marjorie C. Decker</i> | <i>25th Middlesex</i> | <i>2/1/2019</i> |
| <i>Daniel R. Cullinane</i> | <i>12th Suffolk</i> | <i>2/1/2019</i> |
| <i>Diana DiZoglio</i> | <i>First Essex</i> | <i>2/1/2019</i> |
| <i>Natalie M. Higgins</i> | <i>4th Worcester</i> | <i>2/1/2019</i> |
| <i>Paul F. Tucker</i> | <i>7th Essex</i> | <i>2/1/2019</i> |
| <i>Julian Cyr</i> | <i>Cape and Islands</i> | <i>2/1/2019</i> |
| <i>David Henry Argosky LeBoeuf</i> | <i>17th Worcester</i> | <i>2/1/2019</i> |
| <i>Paul W. Mark</i> | <i>2nd Berkshire</i> | <i>2/1/2019</i> |
| <i>Peter Capano</i> | <i>11th Essex</i> | <i>2/1/2019</i> |
| <i>Bruce J. Ayers</i> | <i>1st Norfolk</i> | <i>2/1/2019</i> |
| <i>Colleen M. Garry</i> | <i>36th Middlesex</i> | <i>2/1/2019</i> |
| <i>David Biele</i> | <i>4th Suffolk</i> | <i>2/1/2019</i> |
| <i>Carlos González</i> | <i>10th Hampden</i> | <i>2/1/2019</i> |

| | | |
|---------------------------------|---------------------|-----------------|
| <i>Daniel J. Hunt</i> | <i>13th Suffolk</i> | <i>2/1/2019</i> |
| <i>Paul McMurtry</i> | <i>11th Norfolk</i> | <i>2/1/2019</i> |
| <i>William J. Driscoll, Jr.</i> | <i>7th Norfolk</i> | <i>2/1/2019</i> |

HOUSE No. 2696

By Ms. Ferrante of Gloucester, a petition (accompanied by bill, House, No. 2696) of Ann-Margaret Ferrante and others relative to the definition of fraud in public construction bid laws. State Administration and Regulatory Oversight.

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act relative to the definition of fraud in public construction bid laws.

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. Subsection (a) of section 39M of chapter 30 of the General Laws, as
2 appearing in the 2014 Official Edition, is hereby amended by striking out, in lines 21 to 23, the
3 words “The undersigned certifies under penalties of perjury that this bid is in all respects bona
4 fide, fair and made without collusion or fraud with any other person” and inserting in place
5 thereof the following words:-

6 The undersigned certifies under penalties of perjury that this bid is in all respects bona
7 fide, fair and made without collusion with any person and contains no intentional
8 misrepresentations, omissions or false statements. As used in this paragraph the word “person”
9 shall mean any natural person, joint venture, partnership, corporation or any other business or
10 legal entity.

11 SECTION 2. Section 44A of chapter 149 of the General Laws, as so appearing, is hereby
12 amended by inserting after the definition of “ Eligible” the following definition:-

13 “Fraud”, a statement, act or omission relating to a material fact that (i) has the natural
14 tendency to be relied upon by or to influence the average person, (ii) is knowingly false or
15 misleading or is in reckless disregard of its truth or falsity and (iii) is intended to mislead,
16 regardless of whether the statement, act or omission is actually relied upon;

17 And further, by striking the definition of “responsible" and inserting in place thereof the
18 following new definition:-

19 ““Responsible” means demonstrably possessing the skill, ability and integrity necessary
20 to faithfully perform the work called for by a particular contract, based upon a determination of
21 competent workmanship and financial soundness in accordance with the provisions of section
22 forty-four D of this chapter and shall certify that his bid contains now misrepresentations,
23 omissions, or false statements.”

24 SECTION 3. Section 2 of chapter 149A of the General Laws, as so appearing, is hereby
25 amended by inserting after the definition of “Designer” the following definition:-

26 “Fraud”, a statement, act or omission relating to a material fact that (i) has the natural
27 tendency to be relied upon by or to influence the average person, (ii) is knowingly false or
28 misleading or is in reckless disregard of its truth or falsity and (iii) is intended to mislead,
29 regardless of whether the statement, act or omission is actually relied upon.

30 SECTION 4. Section 19 of said chapter 149A of the General Laws, as so appearing, is
31 hereby amended by striking out the clause six in its entirety, and replacing it with the following:-

32 “(6) The RFP shall require that every response shall be accompanied by a bid deposit in
33 the form of a bid bond, or cash, or a certified check on, or a treasurer’s or cashier’s check issued

34 by a responsible bank or trust company, payable to the awarding authority. The amount of such
35 bid deposit shall be 5 per cent of the value of the bid. Any person submitting a bid under this
36 sections hall, on such a bid, certify as follows:

37 The undersigned certifies under penalty of perjury that this bid is in all respects bona fide,
38 fair, made without collusion with any other person and contains no intentional material
39 misrepresentations, omissions or false statements. As used in this paragraph the word “person”
40 shall mean any natural person, joint venture, partnership, corporation or other business or legal
41 entity.”

42 SECTION 5. Subsection (f) of section 8 of chapter 149A, as so appearing, is hereby
43 amended by striking the fourth sentence and replacing it with the following new language:-

44 “The decision of the prequalification committee shall be final and not subject to appeal
45 except on the grounds that a submission contains intentional, material misrepresentations,
46 omissions, or false statements, or of collusion.”