SENATE DOCKET, NO. 278 FILED ON: 1/27/2021

SENATE . . . . . No. 2086

The Commonwealth of Massachusetts

PRESENTED BY:

Michael O. Moore

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:	
Michael O. Moore	*Second Worcester*	
Jason M. Lewis	*Fifth Middlesex*	*2/23/2021*
Rebecca L. Rausch	*Norfolk, Bristol and Middlesex*	*2/24/2021*
Joan B. Lovely	*Second Essex*	*2/24/2021*
Diana DiZoglio	*First Essex*	*3/1/2021*
Michael D. Brady	*Second Plymouth and Bristol*	*3/1/2021*
James B. Eldridge	*Middlesex and Worcester*	*3/1/2021*
Walter F. Timilty	*Norfolk, Bristol and Plymouth*	*3/8/2021*
Brendan P. Crighton	*Third Essex*	*3/8/2021*
Tami L. Gouveia	*14th Middlesex*	*6/9/2021*
Marc R. Pacheco	*First Plymouth and Bristol*	*7/22/2021*

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SENATE . . . . . No. 2086

By Mr. Moore, a petition (accompanied by bill, Senate, No. 2086) of Michael O. Moore, Jason M. Lewis, Rebecca L. Rausch, Joan B. Lovely and other members of the Senate for legislation to define fraud in public construction bid laws. State Administration and Regulatory Oversight.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *1885* OF 2019-2020.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

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:

SECTION 1. Subsection (a) of section 39M of chapter 30 of the General Laws, as appearing in the 2018 Official Edition, is hereby amended by striking out the words "The undersigned certifies under penalties of perjury that this bid is in all respects bona fide, fair and made without collusion or fraud with any other person" and inserting in place thereof the following words:-

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

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

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

SECTION 3. Said section 44A of said chapter 149, as so appearing, is hereby further amended by striking out the definition of "responsible" and inserting in place thereof the following definition:-

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

SECTION 4. Section 2 of chapter 149A of the General Laws, as so appearing, is hereby amended by inserting after the definition of "Designer" the following definition:-

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

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

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

SECTION 6. Section 19 of said chapter 149A, as so appearing, is hereby amended by striking out paragraph (6) and inserting in place thereof the following:-

(6) The RFP shall require that every response shall be accompanied by a bid deposit in the form of a bid bond, or cash, or a certified check on, or a treasurer's or cashier's check issued by a responsible bank or trust company, payable to the awarding authority. The amount of such bid deposit shall be 5 per cent of the value of the bid. Any person submitting a bid under this sections hall, on such a bid, certify as follows:

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