

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

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:

1 SECTION 1. Subsection (a) of section 39M of chapter 30 of the General Laws, as
2 appearing in the 2018 Official Edition, is hereby amended by striking out the words “The
3 undersigned certifies under penalties of perjury that this bid is in all respects bona fide, fair and
4 made without collusion or fraud with any other person” and inserting in place thereof the
5 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 SECTION 3. Said section 44A of said chapter 149, as so appearing, is hereby further
18 amended by striking out the definition of “responsible" and inserting in place thereof the
19 following definition:-

20 “Responsible” means demonstrably possessing the skill, ability and integrity necessary to
21 faithfully perform the work called for by a particular contract, based upon a determination of
22 competent workmanship and financial soundness in accordance with the provisions of section
23 forty-four D of this chapter and shall certify that his bid contains no misrepresentations,
24 omissions, or false statements.

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

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

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

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

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

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

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