

1 HB195
2 155751-3
3 By Representatives Butler, Williams (J), Roberts, Farley,
4 Williams (D) and McClendon
5 RFD: State Government
6 First Read: 14-JAN-14

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ENROLLED, An Act,

Relating to public buildings and public works; to create the Fair and Open Competition in Governmental Construction Act; to prohibit public agencies from entering into certain contracts; to prohibit certain terms in certain documents; to prohibit public agencies from making certain awards; to prohibit certain persons from placing certain terms in certain documents; and to provide exemptions.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known and may be cited as the "Fair and Open Competition in Governmental Construction Act."

Section 2. The Legislature finds and declares that this act shall do all of the following:

(1) Provide for the efficient procurement of goods and services by governmental units.

(2) Promote the economical, nondiscriminatory, and efficient administration and completion of state and state-funded or state-assisted construction projects.

(3) Provide for fair and open competition for construction contracts, grants, tax abatements, and tax credits awarded by governmental units.

(4) Prohibit requirements for certain terms in construction contracts awarded by governmental units or

1 supported through grants and tax subsidies and abatements by
2 governmental units.

3 (5) Prohibit expenditure of public funds under
4 certain conditions.

5 (6) Prohibit certain terms in procurement documents
6 for certain expenditures by governmental units involving
7 public facilities.

8 (7) Provide powers and duties for certain public
9 officers, employees, and contractors.

10 Section 3. As used in this act, the following words
11 shall have the following meanings:

12 (1) PUBLIC AGENCY. The State of Alabama, and any
13 county, city, town, school district, or other political
14 subdivision of the state, any public trust, any public entity
15 specifically created by the statutes of the State of Alabama
16 or as a result of statutory authorization therefor, and any
17 department, agency, board, bureau, commission, committee, or
18 authority of any of the foregoing public entities.

19 (2) PUBLIC IMPROVEMENT. Any beneficial or valuable
20 change or addition, betterment, enhancement, or amelioration
21 of or upon any real property, or interest therein, belonging
22 to a public agency intended to enhance its value, beauty, or
23 utility or to adapt it to new or further purposes. The term
24 does not include the direct purchase of materials, equipment,
25 or supplies by a public agency, or any personal property.

1 Section 4. A public agency awarding any contract for
2 the construction, repair, remodeling, or demolition of a
3 public improvement, or obligating funds pursuant to such a
4 contract, shall ensure that neither the awarding public agency
5 nor any construction manager acting on behalf of the public
6 agency, in its bid specifications, project agreements, or
7 other controlling documents shall include any of the
8 following:

9 (1) A term that requires, prohibits, encourages, or
10 discourages bidders, contractors, or subcontractors from
11 entering into or adhering to agreements with a collective
12 bargaining organization relating to the construction project
13 or other related construction projects.

14 (2) A term that discriminates against bidders,
15 contractors, or subcontractors based on the status as a party
16 or nonparty to, or the willingness or refusal to enter into,
17 an agreement with a collective bargaining organization
18 relating to the construction project or other related
19 construction projects.

20 Section 5. A public agency shall not award a grant,
21 tax abatement, or tax credit that is conditioned upon a
22 requirement that the awardee include a term described in
23 Section 4 in a contract document for any construction,
24 improvement, maintenance, or renovation to real property or

1 fixtures that are the subject of the grant, tax abatement, or
2 tax credit.

3 Section 6. A public agency or a construction manager
4 or other contracting entity acting on behalf of a public
5 agency shall not place any of the terms described in Section 4
6 in bid specifications, project agreements, or other
7 controlling documents relating to the construction, repair,
8 remodeling, or demolition of a public improvement. Any such
9 included term shall be void and of no effect.

10 Section 7. The head of a public agency may exempt a
11 particular project, contract, subcontract, grant, tax
12 abatement, or tax credit from the requirements of Section 4 if
13 the public agency finds, after public notice and hearing, that
14 special circumstances require an exemption to avert an
15 imminent threat to public health or safety. A finding of
16 special circumstances under this act shall not be based on the
17 possibility or presence of a labor dispute concerning the use
18 of contractors or subcontractors who are nonsignatories to, or
19 otherwise do not adhere to, agreements with one or more
20 collective bargaining organizations, or concerning employees
21 on the project who are not members of or affiliated with a
22 collective bargaining organization.

23 Section 8. (a) The requirements of this act shall
24 not apply to public construction contracts executed before the
25 effective date of this act.

1 (b) The act shall not do any of the following:

2 (1) Prohibit employers or other parties from
3 entering into agreements or engaging in any other activity
4 protected by the National Labor Relations Act, 29 U.S.C.
5 Sections 151 to 169.

6 (2) Interfere with labor relations of parties that
7 are left unregulated under the National Labor Relations Act,
8 29 U.S.C. Sections 151 to 169.

9 (3) Prohibit a public agency from awarding a public
10 contract, grant, tax abatement, or tax credit to a private
11 owner, bidder, contractor, or subcontractor who enters into or
12 who is a party to an agreement with a collective bargaining
13 organization, if being or becoming a party or adhering to an
14 agreement with a collective bargaining organization is not a
15 condition for award of the public contract, grant, tax
16 abatement, or tax credit, and if the public agency does not
17 discriminate against a private owner, bidder, contractor, or
18 subcontractor in the awarding of that grant, tax abatement, or
19 tax credit based upon the status as being or becoming, or the
20 willingness or refusal to become, a party to an agreement with
21 a collective bargaining organization.

22 Section 9. This act shall become effective on the
23 first day of the third month following its passage and
24 approval by the Governor, or its otherwise becoming law.

