

1 HB334
2 136693-1
3 By Representatives Williams (J), Carns, Hammon, McClendon,
4 Davis, McMillan, Moore (B), Merrill, Henry, Ball, Barton,
5 McClurkin, Love, Sanderford, Weaver, Wood and Hubbard (M)
6 RFD: State Government
7 First Read: 14-FEB-12

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8 SYNOPSIS: This bill would create the Fair and Open
9 Competition in Governmental Construction Act.

10 This bill would prohibit public agencies
11 from entering into certain contracts; would
12 prohibit certain terms in certain documents; would
13 prohibit public agencies from making certain
14 awards; would prohibit certain persons from placing
15 certain terms in certain documents; and would
16 provide for exemptions.

17
18 A BILL
19 TO BE ENTITLED
20 AN ACT

21
22 Relating to public buildings and public works; to
23 create the Fair and Open Competition in Governmental
24 Construction Act; to prohibit public agencies from entering
25 into certain contracts; to prohibit certain terms in certain
26 documents; to prohibit public agencies from making certain

1 awards; to prohibit certain persons from placing certain terms
2 in certain documents; and to provide exemptions.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

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

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

17 (4) Prohibit requirements for certain terms in
18 construction contracts and construction contracts awarded by
19 governmental units and supported through grants and tax
20 subsidies and abatements by governmental units.

21 (5) Prohibit expenditure of public funds under
22 certain conditions.

23 (6) Prohibit certain terms in procurement documents
24 for certain expenditures by governmental units involving
25 public facilities.

26 (7) Provide powers and duties for certain public
27 officers, employees, and contractors.

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

3 (1) PUBLIC AGENCY. The State of Alabama, and any
4 county, city, town, school district, or other political
5 subdivision of the state, any public trust, any public entity
6 specifically created by the statutes of the State of Alabama
7 or as a result of statutory authorization therefor, and any
8 department, agency, board, bureau, commission, committee, or
9 authority of any of the foregoing public entities.

10 (2) PUBLIC IMPROVEMENT. Any beneficial or valuable
11 change or addition, betterment, enhancement, or amelioration
12 of or upon any real property, or interest therein, belonging
13 to a public agency intended to enhance its value, beauty, or
14 utility or to adapt it to new or further purposes. The term
15 does not include the direct purchase of materials, equipment,
16 or supplies by a public agency, or any personal property.

17 Section 4. A public agency awarding any contract for
18 the construction, repair, remodeling, or demolition of a
19 public improvement, or obligating funds pursuant to such a
20 contract, shall ensure that neither the awarding public agency
21 nor any construction manager acting on behalf of the public
22 agency, in its bid specifications, project agreements, or
23 other controlling documents shall include all of the
24 following:

25 (1) A term that requires, prohibits, encourages, or
26 discourages bidders, contractors, or subcontractors from
27 entering into or adhering to agreements with a collective

1 bargaining organization relating to the construction project
2 or other related construction projects.

3 (2) A term that discriminates against bidders,
4 contractors, or subcontractors based on the status as a party
5 or nonparty to, or the willingness or refusal to enter into,
6 an agreement with a collective bargaining organization
7 relating to the construction project or other related
8 construction projects.

9 Section 5. A public agency shall not award a grant,
10 tax abatement, or tax credit that is conditioned upon a
11 requirement that the awardee include a term described in
12 Section 3 in a contract document for any construction,
13 improvement, maintenance, or renovation to real property or
14 fixtures that are the subject of the grant, tax abatement, or
15 tax credit.

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

23 Section 7. (a) The requirements of this act shall
24 not apply to public construction contracts executed before
25 November 1, 2012.

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

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

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

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

21 Section 8. This act shall become effective on the
22 first day of the third month following its passage and
23 approval by the Governor, or its otherwise becoming law.