

1 SB161
2 155751-2
3 By Senators Sanford, Blackwell, Waggoner, Orr, Ward, Pittman,
4 Glover, Taylor, Beason, Reed, Scofield, Holley, Hightower,
5 Williams, Marsh, Dial, Bussman, and Allen
6 RFD: Fiscal Responsibility and Accountability
7 First Read: 14-JAN-14

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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 awarded by governmental units or
19 supported through grants and tax subsidies and abatements by
20 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 any 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 4 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 4
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. The head of a public agency may exempt a
24 particular project, contract, subcontract, grant, tax
25 abatement, or tax credit from the requirements of Section 4 if
26 the public agency finds, after public notice and hearing, that
27 special circumstances require an exemption to avert an

1 imminent threat to public health or safety. A finding of
2 special circumstances under this act shall not be based on the
3 possibility or presence of a labor dispute concerning the use
4 of contractors or subcontractors who are nonsignatories to, or
5 otherwise do not adhere to, agreements with one or more
6 collective bargaining organizations, or concerning employees
7 on the project who are not members of or affiliated with a
8 collective bargaining organization.

9 Section 8. (a) The requirements of this act shall
10 not apply to public construction contracts executed before the
11 effective date of this act.

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

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

17 (2) Interfere with labor relations of parties that
18 are left unregulated under the National Labor Relations Act,
19 29 U.S.C. Sections 151 to 169.

20 (3) Prohibit a public agency from awarding a public
21 contract, grant, tax abatement, or tax credit to a private
22 owner, bidder, contractor, or subcontractor who enters into or
23 who is a party to an agreement with a collective bargaining
24 organization, if being or becoming a party or adhering to an
25 agreement with a collective bargaining organization is not a
26 condition for award of the public contract, grant, tax
27 abatement, or tax credit, and if the public agency does not

1 discriminate against a private owner, bidder, contractor, or
2 subcontractor in the awarding of that grant, tax abatement, or
3 tax credit based upon the status as being or becoming, or the
4 willingness or refusal to become, a party to an agreement with
5 a collective bargaining organization.

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