

SUBSTITUTE FOR
SENATE BILL NO. 1085

A bill to amend 2011 PA 98, entitled
"Fair and open competition in governmental construction act,"
by amending the title and sections 5, 7, 9, and 13 (MCL 408.875,
408.877, 408.879, and 408.883) and by adding sections 2 and 8.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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TITLE

An act to provide for fair and open competition in
governmental construction contracts, grants, tax abatements, and
tax credits; to prohibit requirements for certain terms in
government contracts; ~~and contracts supported through government
grants and tax subsidies and abatements; to prohibit expenditure of
public funds under certain conditions;~~ to prohibit certain terms in
procurement documents for certain expenditures involving public
facilities; and to provide for powers and duties of certain public
officers, employees, and contractors.

Senate Bill No. 1085 (S-1) as amended June 7, 2012

1 SEC. 2. THE LEGISLATURE INTENDS THIS ACT TO PROVIDE FOR MORE
2 ECONOMICAL, NONDISCRIMINATORY, NEUTRAL, AND EFFICIENT PROCUREMENT
3 OF CONSTRUCTION-RELATED GOODS AND SERVICES BY THIS STATE AND
4 POLITICAL SUBDIVISIONS OF THIS STATE AS MARKET PARTICIPANTS, AND
5 PROVIDING FOR FAIR AND OPEN COMPETITION BEST EFFECTUATES THIS
6 INTENT.

7 ~~Sec. 5. A governmental unit shall not enter into or expend~~
8 ~~funds under a contract for the construction, repair, remodeling, or~~
9 ~~demolition of a facility if the contract or a subcontract under the~~
10 ~~contract contains any of the following:~~

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

16 ~~—— (b) A term that discriminates against bidders, contractors, or~~
17 ~~subcontractors based on the status as a party or nonparty to, or~~
18 ~~the willingness or refusal to enter into, an agreement with a~~
19 ~~collective bargaining organization relating to the construction~~
20 ~~project or other related construction projects.~~**SUBJECT TO SECTION**

21 **8, A GOVERNMENTAL UNIT AWARDING A CONTRACT [ON OR AFTER THE EFFECTIVE**
22 **DATE OF THE AMENDATORY ACT THAT ADDED SECTION 2] FOR**

23 **THE CONSTRUCTION, REPAIR, REMODELING, OR DEMOLITION OF A FACILITY**
24 **AND ANY CONSTRUCTION MANAGER ACTING ON ITS BEHALF SHALL NOT, IN ANY**
25 **BID SPECIFICATIONS, PROJECT AGREEMENTS, OR OTHER CONTROLLING**
26 **DOCUMENTS:**

27 **(A) REQUIRE OR PROHIBIT A BIDDER, OFFEROR, CONTRACTOR, OR**
SUBCONTRACTOR FROM ENTERING INTO OR ADHERING TO AN AGREEMENT WITH 1

1 OR MORE LABOR ORGANIZATIONS IN REGARD TO THAT PROJECT OR A RELATED
2 CONSTRUCTION PROJECT.

3 (B) OTHERWISE DISCRIMINATE AGAINST A BIDDER, OFFEROR,
4 CONTRACTOR, OR SUBCONTRACTOR FOR BECOMING OR REMAINING OR REFUSING
5 TO BECOME OR REMAIN A SIGNATORY TO, OR FOR ADHERING OR REFUSING TO
6 ADHERE TO, AN AGREEMENT WITH 1 OR MORE LABOR ORGANIZATIONS IN
7 REGARD TO THAT PROJECT OR A RELATED CONSTRUCTION PROJECT.

8 Sec. 7. ~~A-SUBJECT TO SECTION 8, A governmental unit shall not~~
9 ~~award a grant, tax abatement, or tax credit that is conditioned~~
10 ~~upon a requirement that the awardee include a term described in~~
11 ~~section 5(a) or (b) in a contract document for any construction,~~
12 ~~improvement, maintenance, or renovation to real property or~~
13 ~~fixtures that are the subject of the grant, tax abatement, or tax~~
14 ~~credit. This section does not prohibit a governmental unit from~~
15 ~~awarding a grant, tax abatement, or tax credit to a private owner,~~
16 ~~bidder, contractor, or subcontractor who enters into or who is~~
17 ~~party to an agreement with a collective bargaining organization, if~~
18 ~~being or becoming a party or adhering to an agreement with a~~
19 ~~collective bargaining organization is not a condition for award of~~
20 ~~the grant, tax abatement, or tax credit, and if the governmental~~
21 ~~unit does not discriminate against a private owner, bidder,~~
22 ~~contractor, or subcontractor in the awarding of that grant, tax~~
23 ~~abatement, or tax credit based upon the status as being or~~
24 ~~becoming, or the willingness or refusal to become, a party to an~~
25 ~~agreement with a collective bargaining organization.~~

26 SEC. 8. (1) THIS ACT DOES NOT PROHIBIT A GOVERNMENTAL UNIT
27 FROM AWARDING A CONTRACT, GRANT, TAX ABATEMENT, OR TAX CREDIT TO A

1 PRIVATE OWNER, BIDDER, CONTRACTOR, OR SUBCONTRACTOR WHO ENTERS INTO
2 OR WHO IS PARTY TO AN AGREEMENT WITH A LABOR ORGANIZATION, IF BEING
3 OR BECOMING A PARTY OR ADHERING TO AN AGREEMENT WITH A LABOR
4 ORGANIZATION IS NOT A CONDITION FOR AWARD OF THE CONTRACT, GRANT,
5 TAX ABATEMENT, OR TAX CREDIT, AND IF THE GOVERNMENTAL UNIT DOES NOT
6 DISCRIMINATE AGAINST A PRIVATE OWNER, BIDDER, CONTRACTOR, OR
7 SUBCONTRACTOR IN THE AWARDING OF THAT CONTRACT, GRANT, TAX
8 ABATEMENT, OR TAX CREDIT BASED UPON THE STATUS AS BEING OR
9 BECOMING, OR THE WILLINGNESS OR REFUSAL TO BECOME, A PARTY TO AN
10 AGREEMENT WITH A LABOR ORGANIZATION.

11 (2) THIS ACT DOES NOT PROHIBIT A CONTRACTOR OR SUBCONTRACTOR
12 FROM VOLUNTARILY ENTERING INTO OR COMPLYING WITH AN AGREEMENT
13 ENTERED INTO WITH 1 OR MORE LABOR ORGANIZATIONS IN REGARD TO A
14 CONTRACT WITH A GOVERNMENTAL UNIT OR FUNDED IN WHOLE OR IN PART
15 FROM A GRANT, TAX ABATEMENT, OR TAX CREDIT FROM THE GOVERNMENTAL
16 UNIT.

17 ~~Sec. 9. A governmental unit or a construction manager or other~~
18 ~~contracting entity acting on behalf of a governmental unit shall~~
19 ~~not place any of the terms described in section 5 in bid~~
20 ~~specifications, project agreements, or other controlling documents~~
21 ~~relating to the construction, repair, remodeling, or demolition of~~
22 ~~a facility. Any such included term is void and of no effect.~~THE
23 HEAD OF A GOVERNMENTAL UNIT MAY EXEMPT A PARTICULAR PROJECT,
24 CONTRACT, SUBCONTRACT, GRANT, TAX ABATEMENT, OR TAX CREDIT FROM THE
25 REQUIREMENTS OF ANY OR ALL OF THE PROVISIONS OF SECTION 5 OR 7 IF
26 THE GOVERNMENTAL UNIT FINDS, AFTER PUBLIC NOTICE AND A HEARING,
27 THAT SPECIAL CIRCUMSTANCES REQUIRE AN EXEMPTION TO AVERT AN

1 IMMEDIATE THREAT TO PUBLIC HEALTH OR SAFETY. A FINDING OF SPECIAL
2 CIRCUMSTANCES UNDER THIS SECTION SHALL NOT BE BASED ON THE
3 POSSIBILITY OR PRESENCE OF A LABOR DISPUTE CONCERNING THE USE OF
4 CONTRACTORS OR SUBCONTRACTORS WHO ARE NONSIGNATORIES TO, OR
5 OTHERWISE DO NOT ADHERE TO, AGREEMENTS WITH 1 OR MORE LABOR
6 ORGANIZATIONS, OR CONCERNING EMPLOYEES ON THE PROJECT WHO ARE NOT
7 MEMBERS OF OR AFFILIATED WITH A LABOR ORGANIZATION.

8 Sec. 13. This act does not do either of the following:

9 (a) Prohibit employers or other parties from entering into
10 agreements or engaging in any other activity protected by the
11 national labor relations act, 29 USC 151 to 169.

12 (b) Interfere with labor relations of parties that are
13 ~~protected~~ **LEFT UNREGULATED** under the national labor relations act,
14 29 USC 151 to 169.