

SENATE BILL No. 1085

April 19, 2012, Introduced by Senators MOOLENAAR, JONES, HILDENBRAND, ROBERTSON, PROOS, BRANDENBURG, WALKER, MEEKHOF, PAVLOV, BOOHER, HANSEN, CASPERSON, KAHN, PAPPAGEORGE, COLBECK, GREEN, NOFS, JANSEN, EMMONS, HUNE, CASWELL, KOWALL, RICHARDVILLE, SCHUITMAKER and MARLEAU and referred to the Committee on Reforms, Restructuring and Reinventing.

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:

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

1 procurement documents for certain expenditures involving public
2 facilities; and to provide for powers and duties of certain public
3 officers, employees, and contractors.

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

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

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

19 ~~—— (b) A term that discriminates against bidders, contractors, or~~
20 ~~subcontractors based on the status as a party or nonparty to, or~~
21 ~~the willingness or refusal to enter into, an agreement with a~~
22 ~~collective bargaining organization relating to the construction~~
23 ~~project or other related construction projects.~~**SUBJECT TO SECTION**
24 **8, A GOVERNMENTAL UNIT AWARDED A CONTRACT AFTER JULY 19, 2011 FOR**
25 **THE CONSTRUCTION, REPAIR, REMODELING, OR DEMOLITION OF A FACILITY**
26 **AND ANY CONSTRUCTION MANAGER ACTING ON ITS BEHALF SHALL NOT INCLUDE**
27 **ANY OF THE FOLLOWING IN BID SPECIFICATIONS, PROJECT AGREEMENTS, OR**

1 OTHER CONTROLLING DOCUMENTS:

2 (A) A TERM THAT REQUIRES OR PROHIBITS A BIDDER, OFFEROR,
3 CONTRACTOR, OR SUBCONTRACTOR FROM ENTERING INTO OR ADHERING TO AN
4 AGREEMENT WITH 1 OR MORE LABOR ORGANIZATIONS IN REGARD TO THAT
5 PROJECT OR A RELATED CONSTRUCTION PROJECT.

6 (B) A TERM THAT OTHERWISE DISCRIMINATES AGAINST A BIDDER,
7 OFFEROR, CONTRACTOR, OR SUBCONTRACTOR FOR BECOMING OR REMAINING OR
8 REFUSING TO BECOME OR REMAIN A SIGNATORY TO, OR FOR ADHERING OR
9 REFUSING TO ADHERE TO, AN AGREEMENT WITH 1 OR MORE LABOR
10 ORGANIZATIONS IN REGARD TO THAT PROJECT OR A RELATED CONSTRUCTION
11 PROJECT.

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

1 ~~becoming, or the willingness or refusal to become, a party to an~~
2 ~~agreement with a collective bargaining organization.~~

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

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

21 ~~Sec. 9. A governmental unit or a construction manager or other~~
22 ~~contracting entity acting on behalf of a governmental unit shall~~
23 ~~not place any of the terms described in section 5 in bid~~
24 ~~specifications, project agreements, or other controlling documents~~
25 ~~relating to the construction, repair, remodeling, or demolition of~~
26 ~~a facility. Any such included term is void and of no effect.~~**THE**
27 **HEAD OF A GOVERNMENTAL UNIT MAY EXEMPT A PARTICULAR PROJECT,**

1 CONTRACT, SUBCONTRACT, GRANT, TAX ABATEMENT, OR TAX CREDIT FROM THE
2 REQUIREMENTS OF ANY OR ALL OF THE PROVISIONS OF SECTION 5 OR 7 IF
3 THE GOVERNMENTAL UNIT FINDS, AFTER PUBLIC NOTICE AND A HEARING,
4 THAT SPECIAL CIRCUMSTANCES REQUIRE AN EXEMPTION TO AVERT AN
5 IMMINENT THREAT TO PUBLIC HEALTH OR SAFETY. A FINDING OF SPECIAL
6 CIRCUMSTANCES UNDER THIS SECTION SHALL NOT BE BASED ON THE
7 POSSIBILITY OR PRESENCE OF A LABOR DISPUTE CONCERNING THE USE OF
8 CONTRACTORS OR SUBCONTRACTORS WHO ARE NONSIGNATORIES TO, OR
9 OTHERWISE DO NOT ADHERE TO, AGREEMENTS WITH 1 OR MORE LABOR
10 ORGANIZATIONS, OR CONCERNING EMPLOYEES ON THE PROJECT WHO ARE NOT
11 MEMBERS OF OR AFFILIATED WITH A LABOR ORGANIZATION.

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

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

16 (b) Interfere with labor relations of parties that are
17 ~~protected~~ **LEFT UNREGULATED** under the national labor relations act,
18 29 USC 151 to 169.