

Act No. 98  
Public Acts of 2011  
Approved by the Governor  
July 19, 2011  
Filed with the Secretary of State  
July 19, 2011  
EFFECTIVE DATE: July 19, 2011

**STATE OF MICHIGAN  
96TH LEGISLATURE  
REGULAR SESSION OF 2011**

**Introduced by Senators Moolenaar, Kahn, Jansen, Booher, Meekhof, Green, Caswell, Walker, Pavlov, Proos, Marleau, Schuitmaker, Hildenbrand, Pappageorge, Robertson, Hansen, Emmons, Colbeck, Jones, Casperson and Brandenburg**

# **ENROLLED SENATE BILL No. 165**

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.

*The People of the State of Michigan enact:*

Sec. 1. This act shall be known and may be cited as the “fair and open competition in governmental construction act”.

Sec. 3. As used in this act:

(a) “Facility” means any actual physical improvement to real property owned, or leased, directly or through a building authority, by a governmental unit, including, but not limited to, roads; bridges; runways; rails; or a building or structure along with the building’s or structure’s grounds, approaches, services, and appurtenances.

(b) “Governmental unit” means this state, a county, city, township, village, school district, intermediate school district, community college, or public university that receives appropriations from this state, or any agency, board, commission, authority, or instrumentality of the foregoing.

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

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

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

Sec. 7. A governmental unit shall not award a grant, tax abatement, or tax credit that is conditioned upon a requirement that the awardee include a term described in section 5(a) or (b) in a contract document for any construction, improvement, maintenance, or renovation to real property or fixtures that are the subject of the grant, tax abatement, or tax credit. This section does not prohibit a governmental unit from awarding a grant, tax abatement, or tax credit to a private owner, bidder, contractor, or subcontractor who enters into or who is party to an agreement with a collective bargaining

organization, if being or becoming a party or adhering to an agreement with a collective bargaining organization is not a condition for award of the grant, tax abatement, or tax credit, and if the governmental unit does not discriminate against a private owner, bidder, contractor, or subcontractor in the awarding of that grant, tax abatement, or tax credit based upon the status as being or becoming, or the willingness or refusal to become, a party to an agreement with a collective bargaining organization.

Sec. 9. A governmental unit or a construction manager or other contracting entity acting on behalf of a governmental unit shall not place any of the terms described in section 5 in bid specifications, project agreements, or other controlling documents relating to the construction, repair, remodeling, or demolition of a facility. Any such included term is void and of no effect.

Sec. 11. The requirements of this act do not do either of the following:

- (a) Affect any provision in 1965 PA 166, MCL 408.551 to 408.558.
- (b) Apply to construction contracts executed before the effective date of this act.

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

- (a) Prohibit employers or other parties from entering into agreements or engaging in any other activity protected by the national labor relations act, 29 USC 151 to 169.
- (b) Interfere with labor relations of parties that are protected under the national labor relations act, 29 USC 151 to 169.

This act is ordered to take immediate effect.

*Carol Morey Viventi*

Secretary of the Senate

*Jay E. Randall*

Clerk of the House of Representatives

Approved .....

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Governor