

State; purchasing; open contracting act; create.

STATE: Purchasing; CONSTRUCTION: Contracts; LAW: Contracts

A bill to ensure fair and open competition for all public construction contracts; to prohibit the state and any political subdivision from entering into certain construction contracts; to prohibit discrimination against others for certain associations; and to regulate the use of public funds.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "open contracting act".

3 Sec. 3. As used in this act:

4 (a) "Construction contract" means any contract for the con-
5 struction, erection, alteration, rehabilitation, conversion,
6 repair, improvement, movement, demolition, or furnishing of labor
7 to install material or equipment for any public building or other
8 public property.

(b) "Labor organization" means any organization of any kind, or any agency or employee representation committee, group, association, or plan in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of employment or work.

(c) "Political subdivision" means a county, city, village, township, school district, or authority created by this state.

(d) "State" means the state of Michigan and its agencies, departments, commissions, courts, boards, councils, divisions, offices, and subdivisions.

Sec. 5. (1) This state or a political subdivision shall not enter into a construction contract that requires a contractor, subcontractor, or employee of the contractor or subcontractor as a condition of the contract to do any of the following:

(a) To enter into an agreement with 1 or more labor organizations involved in the same or a related construction project.

(b) To become a member of or affiliated with a labor organization as a condition of working on the construction project.

(c) To pay dues or fees to a labor organization, over an employee's objection, in excess of the employee's share of labor organization costs relating to collective bargaining, contract administration, or grievance.

(2) This state or a political subdivision shall require that each construction contract to which it is a party include a guarantee provision by the contractor that all bid specifications, project agreements, and any other controlling documents relating

1 to the construction contract and any subcontracts under the
2 construction contract do not require a bidder, offeror, contrac-
3 tor, subcontractor, or employee of the contractor or subcontrac-
4 tor to do any of the following:

5 (a) To enter into an agreement with 1 or more labor organi-
6 zations involved in the same or a related construction project.

7 (b) To become a member of or affiliated with a labor organi-
8 zation as a condition of working on the construction project.

9 (c) To pay dues or fees to a labor organization, over an
10 employee's objection, in excess of the employee's share of labor
11 organization costs relating to collective bargaining, contract
12 administration, or grievance.

13 (3) This state or a political subdivision shall not discrim-
14 inate against any bidder, offeror, contractor, subcontractor, or
15 employee of the contractor or subcontractor that either becomes
16 or remains a member of or affiliated with a labor organization or
17 that enters into an agreement with a labor organization.

18 (4) This section shall not prohibit a bidder, offeror, con-
19 tractor, or subcontractor from voluntarily entering into an oth-
20 erwise lawful agreement with a labor organization regarding its
21 own employees.

22 Sec. 7. This state or a political subdivision shall not
23 expend public funds or enter into cooperative agreements for any
24 construction contract that is not in compliance with section 5.
25 If this state or any political subdivision reasonably believes
26 that a contractor or subcontractor receiving public funds under a
27 construction contract entered under this act is not complying

1 with section 5, then it may require the contractor or
2 subcontractor to provide a copy of its bid specifications,
3 project agreements, and any other controlling documents to ensure
4 that public funds are not being used in violation of this
5 section.

6 Sec. 9. This state or a political subdivision may institute
7 appropriate proceedings to secure compliance with this act.

8 Sec. 11. Any interested party to the construction contract
9 has standing to file suit to challenge the contract, bid specifi-
10 cations, project agreements, and any other controlling documents
11 as a violation of this act. If the court finds for the inter-
12 ested party, the court shall award the interested party his or
13 her fees and costs incurred in maintaining the suit.

14 Sec. 13. If any portion of this act or application of any
15 portion of this act to any person or circumstance is found to be
16 invalid by a court, the invalidity shall not affect the remaining
17 portions or applications of this act that can be given effect
18 without the invalid portions or application if the remaining por-
19 tions are not determined by the court to be inoperable. The pro-
20 visions of this act are severable.