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Senate Bill 165 (as introduced 2-17-11)
Sponsor: Senator John Moolenaar
Committee: Reforms, Restructuring, and Reinventing

Date Completed: 3-8-11

CONTENT

The bill would create the "Fair and Open Competition in Governmental Construction Act" to do the following:

- **Prohibit governmental units from entering into construction contracts that contained certain terms related to collective bargaining agreements.**
- **Prohibit governmental units from awarding grants, tax abatements, or tax credits conditioned on a requirement that the awardee include a prohibited term in a construction contract.**
- **Prohibit governmental units from placing a prohibited term in bid specifications or project agreements related to construction of a facility.**

The bill includes the following definitions:

- "Facility" would mean any actual physical improvement to real property owned, or leased, by a governmental unit, including roads, bridges, runways, rails, or a building or structure and its grounds, approaches, services, and appurtenances.
- "Governmental unit" would mean 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.

The bill would prohibit a governmental unit from entering into, or spending funds under, a contract for construction if that contract contained either of the following:

- A term requiring, prohibiting, encouraging, or discouraging bidders from entering into agreements with a collective bargaining organization relating to the construction project.
- A term discriminating against bidders or contractors based on the status as a party or nonparty to, or willingness or refusal to enter into, an agreement with a collective bargaining organization relating to the construction project.

The bill also would prohibit a governmental unit from awarding a grant, tax abatement, or tax credit that was conditioned upon a requirement that the awardee include any of the prohibited terms listed above in a contract document for any construction to real property that was the subject of the grant, tax abatement, or tax credit.

Finally, the bill would prohibit a governmental unit or a construction manager or other entity acting on behalf of a governmental unit, from placing any of the prohibited terms in bid

specifications, project agreements, or other controlling documents relating to the construction of a facility. Any such included term would be considered void.

The requirements of the proposed Act would not apply to any construction contracts executed before the Act's effective date.

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government. Depending on the contracts, governmental entities could potentially see cost savings from entering into construction contracts that would have to adhere to the provisions of the bill.

The amount of savings is indeterminate and would depend on the difference in the cost of the contracts among the bidders and on the number of affected governmental units.

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