

HOUSE BILL 2005

By McDaniel

AN ACT to amend Tennessee Code Annotated, Title 12, Chapter 4, to enact the "Freedom in Contracting Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 12, Chapter 4, is amended by adding Sections 2 through 6 as a new, appropriately designated part.

SECTION 2. This part shall be known and may be cited as the "Freedom in Contracting Act".

SECTION 3. The purpose of this part is to prohibit public agencies from imposing certain labor and wage requirements as a condition of performing public works that are state funded in part or in whole.

SECTION 4. The state and its political subdivisions, agencies and instrumentalities thereof, when engaged in procuring products or services or letting contracts for manufacture of public works, or overseeing such procurement, construction or manufacture to be funded in part or in whole with state funds, shall ensure that no bid specifications, project agreements and other controlling documents, entered into, required or subject to approval by the state, subdivision, agency or instrumentality:

(1) Require bidders, offerors, contractors or subcontractors to enter into or adhere to agreements with one (1) or more labor organizations on the same or related projects;

(2) Discriminate against bidders, offerors, contractors or subcontractors for refusing to become or remain signatories or otherwise adhere to agreements with one (1) or more labor organizations on the same or related construction projects; or

(3) Require any bidder, offeror, contractor or subcontractor to enter into, adhere to or enforce any agreement that requires its employees as a condition of employment to:

(A) Become members of or become affiliated with a labor organization or employee organization of any kind; or

(B) Pay dues or fees to a labor organization or employee organization, over an employee's objection, in excess of the employee's share of labor or employee organization costs relating to collective bargaining, contract administration or grievance adjustment; or

(C) Require any bidder, offeror, contractor or subcontractor to pay:

(i) Wages that exceed the state's most current prevailing wage scale established pursuant to title 12, chapter 4, part 4; or

(ii) A specific dollar amount for the provision of fringe benefits for employees.

#### SECTION 5.

(a) The state and its political subdivisions, agencies and instrumentalities thereof shall not issue grants or enter into cooperative agreements for construction projects conditioned on a requirement that bid specifications, project agreements or other controlling documents pertaining to the grant or cooperative agreement contain any of the elements specified in Section 4.

(b) The state and political subdivisions or any agencies or instrumentalities thereof shall exercise such authority as may be required to preclude a grant recipient or party to a cooperative agreement from imposing any of the elements specified in Section 4 in connection with any grant or cooperative agreement awarded or entered into.

SECTION 6. Any interested party, including a bidder, offeror, contractor, subcontractor, or taxpayer, shall have any standing to challenge any bid specification, project agreement, controlling document, grant or cooperative agreement that such party alleges has violated this part. Such party shall be awarded costs and attorney's fees in the event that the challenge prevails.

SECTION 7. This act shall take effect July 1, 2009, the public welfare requiring it, and shall apply to contracts entered into on or after that date.