ENGROSSED HOUSE
BILL NO. 3043 By: Osborn and Faught of the House

and

Brown of the Senate

An Act relating to public buildings and public works; creating the Fair and Open Competition in Governmental Construction Act; declaring purposes; defining terms; prohibiting public agencies from entering into certain contracts; prohibiting certain terms in certain documents; prohibiting public agencies from making certain awards; prohibiting certain persons from placing certain terms in certain documents; providing exemptions; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 81 of Title 61, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Fair and Open Competition in Governmental Construction Act". The purposes of this act are to provide for the efficient procurement of goods and services by governmental units; to promote the economical, nondiscriminatory, and efficient administration and completion of state and state-funded or state-assisted construction projects; to provide for fair and open competition for construction contracts,

grants, tax abatements, and tax credits awarded by governmental units; to prohibit requirements for certain terms in construction contracts and construction contracts awarded by governmental units and supported through grants and tax subsidies and abatements by governmental units; to prohibit expenditure of public funds under certain conditions; to prohibit certain terms in procurement documents for certain expenditures by governmental units involving public facilities; and to provide powers and duties for certain public officers, employees, and contractors.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 82 of Title 61, unless there is created a duplication in numbering, reads as follows:

As used in the Fair and Open Competition in Governmental Construction Act:

1. "Public improvement" means any beneficial or valuable change or addition, betterment, enhancement or amelioration of or upon any real property, or interest therein, belonging to a public agency intended to enhance its value, beauty or utility or to adapt it to new or further purposes. The term does not include the direct purchase of materials, equipment or supplies by a public agency, or any personal property; and

2. "Public agency" means the State of Oklahoma, and any county, city, town, school district or other political subdivision of the state, any public trust, any public entity specifically created by

the statutes of the State of Oklahoma or as a result of statutory authorization therefor, and any department, agency, board, bureau, commission, committee or authority of any of the foregoing public entities.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 83 of Title 61, unless there is created a duplication in numbering, reads as follows:

A public agency awarding any contract for the construction, repair, remodeling, or demolition of a public improvement or obligating funds pursuant to such a contract, shall ensure that neither the awarding public agency nor any construction manager acting on behalf of the public agency shall, in its bid specifications, project agreements, or other controlling documents, include:

1. 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; and

2. 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.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 84 of Title 61, unless there is created a duplication in numbering, reads as follows:

A public agency 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 3 of the Fair and Open Competition in Governmental Construction Act 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.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 85 of Title 61, unless there is created a duplication in numbering, reads as follows:

A public agency or a construction manager or other contracting entity acting on behalf of a public agency shall not place any of the terms described in Section 3 of the Fair and Open Competition in Governmental Construction Act in bid specifications, project agreements, or other controlling documents relating to the construction, repair, remodeling, or demolition of a public improvement. Any such included term is void and of no effect.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 86 of Title 61, unless there is created a duplication in numbering, reads as follows:

A. The requirements of the Fair and Open Competition in Governmental Construction Act do not apply to public construction contracts executed before November 1, 2012.

B. The Fair and Open Competition in Governmental Construction Act does not:

1. Prohibit employers or other parties from entering into agreements or engaging in any other activity protected by the National Labor Relations Act, 29 U.S.C., Sections 151 to 169;

2. Interfere with labor relations of parties that are protected under the National Labor Relations Act, 29 U.S.C., Sections 151 to 169; or

3. Prohibit a public agency from awarding a public contract, 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 public contract, grant, tax abatement, or tax credit, and if the public agency 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.

SECTION 7. This act shall become effective November 1, 2012.

Passed the House of Representatives the 15th day of March, 2012.

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Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2012.

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Presiding Officer of the Senate