

**SB220 INTRODUCED**



1 SB220  
2 WD2J55E-1  
3 By Senators Roberts, Orr, Jones, Shelnett  
4 RFD: County and Municipal Government  
5 First Read: 19-Mar-24



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SYNOPSIS:

Under existing law, all public contracts by certain local awarding authorities for goods or services involving \$30,000 or more must be entered into by free and open competitive bidding, on sealed bids, to the lowest responsible and responsive bidder.

Also under existing law, the method of awarding state contracts for goods and services is subject to the state procurement laws administered by the Division of Procurement within the Department of Finance.

This bill would prohibit any state or local awarding authority from awarding a contract to an entity organized under the laws of the People's Republic of China or that is owned or operated by the People's Republic of China.

This bill would also provide criminal and civil penalties for a violation.

Section 111.05 of the Constitution of Alabama of 2022, prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from becoming effective with regard to a local governmental entity without enactment by a 2/3 vote unless: it comes within one of a number of specified exceptions; it is approved by the affected entity; or the Legislature appropriates funds, or



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29 provides a local source of revenue, to the entity for  
30 the purpose.

31 The purpose or effect of this bill would be to  
32 require a new or increased expenditure of local funds  
33 within the meaning of the section. However, the bill  
34 does not require approval of a local governmental  
35 entity or enactment by a 2/3 vote to become effective  
36 because it comes within one of the specified exceptions  
37 contained in the section.

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A BILL

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TO BE ENTITLED

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AN ACT

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44 Public contracts; to prohibit certain companies  
45 affiliated with the People's Republic of China from entering  
46 into public contracts with a public awarding authority; to  
47 provide criminal and civil penalties for a violation; and in  
48 connection therewith would have as its purpose or effect the  
49 requirement of a new or increased expenditure of local funds  
50 within the meaning of Section 111.05 of the Constitution of  
51 Alabama of 2022.

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BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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Section 1. The Legislature finds and declares the  
54 following:

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(1) The Chinese Communist Party's (CCP) authoritarian  
56 governance over the People's Republic of China (PRC) includes



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57 extensive efforts to destroy any meaningful distinction  
58 between the CCP, the PRC state, and commercial entities in the  
59 PRC.

60 (2) Dealings with PRC commercial entities tend to be  
61 less commercially sound because the entities are unusually  
62 likely to be acting on noncommercial motivations and carry  
63 increased political risk, including the risk of federal  
64 sanctions from the United States government.

65 (3) While no PRC commercial entity is beyond the reach  
66 of the CCP, PRC state-owned entities present heightened  
67 concerns and threaten the State of Alabama's security,  
68 including by making accessible to the CCP and PRC government  
69 information about the structure, operations, resources, and  
70 infrastructure of the government of this state.

71 (4) Business transactions with PRC commercial entities,  
72 especially PRC state-owned entities, threaten the privacy and  
73 security of the residents of this state, especially when the  
74 personal information of the residents of this state is  
75 involved in the business transactions.

76 Section 2. (a) As used in this act, the following terms  
77 have the following meanings:

78 (1) COMMUNICATIONS TECHNOLOGIES. Includes  
79 communications technologies and the components, networks,  
80 systems, or services thereof.

81 (2) COMPANY. Any sole proprietorship, organization,  
82 association, corporation, partnership, joint venture, limited  
83 partnership, limited liability partnership, limited liability  
84 company, or other entity or business association, including



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85 all wholly owned subsidiaries, majority owned subsidiaries,  
86 parent companies, or affiliates of such entities or business  
87 associations, that exist for the purpose of making profit.

88 (3) OWNED. Includes an ownership interest in whole or  
89 in part. For purposes of a publicly traded company, the term  
90 means any share of ownership that includes the ability to  
91 direct or influence the operations of the company, the ability  
92 to appoint or discharge any board member, officer, or  
93 director, or any other rights beyond those available to a  
94 retail investor holding an equivalent share of ownership.

95 (4) PUBLIC ENTITY. The state or any department, agency,  
96 commission, or other body of the state, including publicly  
97 funded institutions of higher education, and any local  
98 governing body, political subdivision, or school district, and  
99 any other public or private agency, person, partnership,  
100 corporation, or business entity acting on behalf of any public  
101 entity.

102 (5) SCRUTINIZED COMPANY. A company to which any of the  
103 following applies:

104 a. Is organized under the laws of the People's Republic  
105 of China (PRC) or has its principal place of business in the  
106 PRC.

107 b. Is owned or operated, in whole or in part, by the  
108 government of the PRC or any entity controlled by the  
109 government of the PRC.

110 c. Any subsidiary or parent company of any company  
111 described in this subdivision.

112 (b) A scrutinized company shall be ineligible to, and



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113 shall not bid on, submit a proposal for, or enter into,  
114 directly or indirectly through a third party, any contract or  
115 contract renewal with any public awarding authority for any  
116 information or communications technologies.

117 (c) No public awarding authority shall enter into any  
118 contract or contract renewal that would result in any public  
119 funds being transferred under either of the following  
120 circumstances:

121 (1) To a scrutinized company in connection with any  
122 information or communications technologies.

123 (2) To any company in connection with any information  
124 or communications technologies that originate with a  
125 scrutinized company.

126 (d) A public awarding authority shall require a company  
127 that submits a bid or proposal with respect to a contract for  
128 goods or services or that enters into any contract or contract  
129 renewal with any public awarding authority for any information  
130 or communications technologies to certify all of the  
131 following:

132 (1) The company is not a scrutinized company.

133 (2) The company will not subcontract with any  
134 scrutinized company for any aspect of its performance of the  
135 contract.

136 (3) That any products or services that are to be  
137 provided pursuant to the contract do not originate with a  
138 scrutinized company.

139 (e) Any contract determined by the Chief Procurement  
140 Officer to be in violation of this act shall be void ab



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141 initio.

142 (f) Any person who knowingly violates this act shall be  
143 guilty of a Class C felony.

144 (g) In addition to the penalties provided in subsection  
145 (f), the person shall be subject to both of the following:

146 (1) Liable for a civil penalty in an amount that is  
147 equal to the greater of: (i) two hundred fifty thousand  
148 dollars (\$250,000); (ii) twice the amount of the contract for  
149 which a bid or proposal was submitted; or (iii) the amount of  
150 any losses suffered by the public awarding authority or the  
151 state as a result of the violation.

152 (2) Ineligible to enter into any contract with any  
153 public awarding authority in the state for a period of 10  
154 years.

155 (h) The Attorney General may bring an action in any  
156 court of competent jurisdiction against any person that  
157 violates this act.

158 (i) The Chief Procurement Officer shall adopt rules to  
159 implement this section. The rules shall include a procedure  
160 for a public awarding authority to challenge a company's  
161 certification under this section and a procedure to obtain a  
162 determination from the Chief Procurement Officer that a  
163 potential contract complies with the requirements of this  
164 section.

165 Section 3. Although this bill would have as its purpose  
166 or effect the requirement of a new or increased expenditure of  
167 local funds, the bill is excluded from further requirements  
168 and application under Section 111.05 of the Constitution of



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169 Alabama of 2022, because the bill defines a new crime or  
170 amends the definition of an existing crime.

171 Section 4. This act shall become effective on October  
172 1, 2024.