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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 certain business entities deemed to pose an unacceptable risk to the national security of the United States and the people therein.

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



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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39

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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 business entities  
45 from entering into public contracts with a public awarding  
46 authority; to provide criminal and civil penalties for a  
47 violation; and in connection therewith would have as its  
48 purpose or effect the requirement of a new or increased  
49 expenditure of local funds within the meaning of Section  
50 111.05 of the Constitution of Alabama of 2022.

51

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

52

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

54

(1) The Chinese Communist Party's (CCP) authoritarian  
55 governance over the People's Republic of China (PRC) includes  
56 extensive efforts to destroy any meaningful distinction



57 between the CCP, the PRC state, and commercial entities in the  
58 PRC.

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

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

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

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

77 (1) COMPANY. Any sole proprietorship, organization,  
78 association, corporation, partnership, joint venture, limited  
79 partnership, limited liability partnership, limited liability  
80 company, or other entity or business association, including  
81 all wholly owned subsidiaries, majority owned subsidiaries,  
82 parent companies, or affiliates of such entities or business  
83 associations, that exist for the purpose of making profit.

84 (2) INFORMATION OR COMMUNICATIONS TECHNOLOGIES.



85 Includes any equipment used in fixed and mobile networks that  
86 provides high-speed, switched, broadband telecommunications  
87 capability, provided the equipment includes or uses electronic  
88 components.

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

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

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

105 a. Is a company on the Federal Communications  
106 Commission's Covered List, as provided in 47 C.F.R § 1.50002,  
107 or Section 1260H of the National Defense Authorization Act for  
108 Fiscal Year 2021, which provides communications equipment or  
109 services that are deemed to pose an unacceptable risk to the  
110 national security of the United States or the security and  
111 safety of persons in the United States.

112 b. Any subsidiary or parent company of any company



113 described in this subdivision.

114 (b) A scrutinized company shall be ineligible to, and  
115 shall not bid on, submit a proposal for, or enter into,  
116 directly or indirectly through a third party, any contract or  
117 contract renewal with any public awarding authority for any  
118 information or communications technologies.

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

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

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

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

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

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

138 (3) That any information or communications technologies  
139 that are to be provided pursuant to the contract do not  
140 originate with a scrutinized company.



141 (e) Any contract determined by the Chief Procurement  
142 Officer to be in violation of this act shall be void ab  
143 initio.

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

146 (g) In addition to the penalties provided in subsection  
147 (f), the person who knowingly violates this act shall be  
148 subject to both of the following:

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

155 (2) Ineligible to enter into any contract with any  
156 public awarding authority in the state for a period of 10  
157 years.

158 (h) The Attorney General may bring an action in any  
159 court of competent jurisdiction against any person that  
160 violates this act.

161 (i) The Chief Procurement Officer shall adopt rules to  
162 implement this section. The rules shall include a procedure  
163 for a public awarding authority to challenge a company's  
164 certification under this section and a procedure to obtain a  
165 determination from the Chief Procurement Officer that a  
166 potential contract complies with the requirements of this  
167 section. The rules shall not amend the definition of  
168 "scrutinized company" as defined under this section.



169           Section 3. Although this bill would have as its purpose  
170 or effect the requirement of a new or increased expenditure of  
171 local funds, the bill is excluded from further requirements  
172 and application under Section 111.05 of the Constitution of  
173 Alabama of 2022, because the bill defines a new crime or  
174 amends the definition of an existing crime.

175           Section 4. This act shall become effective on October  
176 1, 2024.